

No. 16295 ✓

United States
Court of Appeals
for the Ninth Circuit

TODD SHIPYARDS CORPORATION,

Appellant.

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division

FILED

MAY - 5 1959

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Proctors for Appellee.

In the United States District Court for the Northern District of California, Southern Division

In Admiralty—No. 27721

In Re TROJAN, on the Petition of the UNITED STATES OF AMERICA, as Owner, for Exoneration From or Limitation of Liability.

**PETITION FOR EXONERATION FROM
OR LIMITATION OF LIABILITY**

To the Honorable, the Judges of the United States District Court for the Northern District of California, Sitting in Admiralty:

The Petition of the United States of America, owner of the Tanker Trojan (ex Jeanny), in a cause of exoneration from or limitation of liability, civil and maritime, respectfully shows as follows:

I.

Petitioner is and at all times mentioned herein was a sovereign nation.

II.

The steam tanker Trojan (ex Jeanny) is and was at all material times a steel, ocean-going T2 tanker of 10,296 gross tons, registered under the laws of the United States, Official No. 247177.

III.

On April 22, 1955, Petitioner took title to the Steam Tanker Trojan (ex Jeanny) under a certain decree of forfeiture passed on that date by the

United States District Court for the Northern District of California in the case of United States of America vs. Tanker Jeanny, etc., Admiralty No. 26366, and thereafter and until on or about December 26, 1956, the Trojan was owned by Petitioner and berthed as a dead ship in the Suisun Bay Reserve Fleet of the United States Maritime Administration.

IV.

On December 26, 1956, pursuant to a certain contract of sale dated as of December 21, 1956, Petitioner sold and delivered the Steam Tanker Trojan (ex Jeanny) to Rotary Tankers Corporation, a Delaware corporation, which has since changed its name and is now known as Sheffield Tankers Corporation and will hereafter be so referred to. The sale price was \$2,308,488.00.

V.

On or about January 4, 1957, the Trojan, then named the Jeanny, was moved to Todd Shipyards, Alameda, California, for extensive reactivation repairs on behalf of Sheffield Tankers Corporation, and on January 29, 1957, at approximately 3:10 p.m., while she was moored afloat at a Todd Shipyard pier, undergoing repair, an explosion or explosions occurred within the after portion of the vessel followed by fire, which resulted in many deaths and personal injuries and much property damage. Repairs to the vessel had not been completed and the voyage of the vessel had not then commenced.

VI.

The explosion and fire aboard the Trojan January 29, 1957, and the resulting loss, damage and injury were solely and proximately caused by the negligence and fault of the Todd Shipyards Corporation, their servants, agents and employees and others not now known to Petitioner and were not caused or contributed to by any act, omission, fault, negligence or breach of duty of Petitioner and were done, occasioned and incurred without the privity or knowledge of Petitioner.

VII.

The Trojan was at all times during Petitioner's ownership thereof in all respects tight, staunch, strong and seaworthy and well and sufficiently fitted, supplied, equipped and furnished for the service in which she was engaged; at no time during Petitioner's ownership of the Trojan was she operated, but at all such times she was maintained as a dead ship and berthed in the Suisun Bay Reserve Fleet of the United States Maritime Administration. At all such times Petitioner exercised due diligence to make the Trojan in all respects seaworthy and properly fitted, supplied, equipped and furnished as set forth above for such status. At and about the time of the said explosion or explosions and fire aboard the Trojan, January 29, 1957, Petitioner had no custody or control of the vessel and no servants, agents or employees of Petitioner were on or about the vessel or participating in any activities with reference to her re-

pairs or the said explosion or explosions and fire, or in any way responsible therefor.

VIII.

Petitioner is informed and believes that the value of the Trojan on January 29, 1957, after the said explosion or explosions and fire in which the vessel was damaged, was the sum of \$1,918,653.60. The value of Petitioner's interest in the Trojan on January 29, 1957, immediately after the said explosion or explosions and fire was nil and there was no pending freight. The gross tonnage of the vessel without deduction on account of engine room less the space of 632 tons occupied by seamen and appropriated to their use is 9,664 tons. The vessel is in the possession of Sheffield Tankers Corporation, at Alameda, California.

IX.

Petitioner is informed and believes that there are no demands, liens or claims of lien in contract or in tort against the Trojan arising or existing on January 29, 1957, other than claims arising out of the said explosion or explosions and fire, except that Todd Shipyards Corporation, as libelant, has filed a certain action against Sheffield Tankers Corporation and the Trojan in the United States District Court for the Northern District of California, Admiralty No. 27506, claiming a lien in the total amount of approximately \$1,400,000.00 for work, labor, materials and supplies furnished to the vessel, some of which were furnished prior to the ex-

plosion or explosions and fire and some of which were furnished subsequent thereto. The proctors for the libelant in the said action are McCutchen, Thomas, Matthew, Griffiths & Greene, and Russell A. Mackey, Esq., whose address is 1400 Balfour Building, San Francisco 4, California.

X.

On December 20, 1957, Todd Shipyards Corporation, as cross-respondent, filed, in that certain action in the United States District Court for the Northern District of California, entitled Todd Shipyards Corporation vs. the Steam Tanker Trojan, Admiralty No. 27506, an impleading petition against the United States of America, alleging that Todd Shipyards Corporation was damaged by the explosion and fire aboard the Trojan, January 29, 1957, in an unspecified amount dependent upon claims made against Todd Shipyards Corporation, and claiming the recovery of all such damages from the United States of America, on the basis of alleged acts and failures to act of Petitioner as owner of the Trojan (ex Jeanny). The proctors for the cross-respondent in the said action are McCutchen, Thomas, Matthew, Griffiths & Greene, and Russell A. Mackey, Esq., whose address is 1400 Balfour Building, San Francisco 4, California. Pursuant to an order of consolidation, dated April 28, 1958, the said action, Admiralty No. 27506, was consolidated with, and under the caption of, that certain action in the United States District Court for the Northern District of California entitled,

In the Matter of the Petition of Sheffield Tankers Corp., etc., Admiralty No. 27543.

XI.

On April 8, 1958, Todd Shipyards Corporation, as libelant, filed, in that certain action in the United States District Court for the Northern District of California entitled Todd Shipyards Corporation vs. United States of America, Admiralty No. 27702, a libel against the United States of America, alleging that Todd Shipyards Corporation was damaged by the explosion and fire aboard the Trojan, January 29, 1957, in an amount in excess of \$8,000,000.00, and claiming the recovery of all such damages from the United States of America, on the basis of alleged acts and failures to act of Petitioner as owner of the Trojan (ex Jeanny). The proctors for the libelant in the said action are McCutchen, Thomas, Matthew, Griffiths & Greene, and Russell A. Mackey, Esq., whose address is 1400 Balfour Building, San Francisco 4, California.

XII.

On April 8, 1958, Todd Shipyards Corporation, as plaintiff, filed, in that certain action in the United States District Court for the Northern District of California entitled Todd Shipyards Corporation vs. United States of America, Civil No. 37181, a complaint against the United States of America, alleging that Todd Shipyards Corporation was damaged by the explosion and fire aboard the Trojan, January 29, 1957, in an amount in ex-

cess of \$8,000,000.00, and claiming the recovery of all such damages from the United States of America, on the basis of alleged acts and failures to act of Petitioner as owner of the Trojan (ex Jeanny). The attorneys for the plaintiff in the said action are McCutchen, Thomas, Matthew, Griffiths & Greene, and Russell A. Mackey, Esq., whose address is 1400 Balfour Building, San Francisco 4, California.

XIII.

In addition to the aforesaid suits, Petitioner is informed and believes that on behalf of certain of the persons injured or dead as a result of the said explosion or explosions and fire, or their personal representatives, the following suits have been filed and are now pending:

1. A suit against the Trojan, and Sheffield Tankers Corporation in the United States District Court for the Northern District of California, Southern Division, in Admiralty No. 27507, by John Polk and others, as libelants, claiming total damages on behalf of all the said libelants in the amount of \$1,001,500.00. Proctor for Libelants in the said suit is Jay A. Darwin, Esq., whose address is 68 Post Street, San Francisco.

2. A suit filed in the Superior Court in and for the County of Alameda, No. 281388, by Charles Cecil McNaughton, as plaintiff, against Sheffield Tankers Corporation and Todd Shipyards Corporation in the amount of \$50,000.00. The attorney for plaintiff in the said suit is Dudley Harkleroad

whose address is 351 California Street, San Francisco.

3. A suit filed against the Trojan and Sheffield Tankers Corporation in the United States District Court for the Northern District of California, Admiralty No. 27537, by Weldon Cochran and others, as libelants, claiming total damages on behalf of all the said libelants in the amount of \$375,000.00. Proctors for libelants in the said suit are Andrew Bodisco and George L. Cooke whose address is 465 California Street, San Francisco.

XIV.

Sheffield Tankers Corporation has filed, in the United States District Court for the Northern District of California, its petition for exoneration from or limitation of liability, Admiralty No. 27543, and numerous claimants have filed their claims therein. The names of such claimants and the names and addresses of their respective proctors are shown by the record in the said action.

XV.

It is expected that other claims will be made and suits filed against the United States of America as a result of the explosion or explosions and fire, in addition to the claims made by Todd Shipyards Corporation as described above. The total amount of such claims greatly exceeds the value of the interest of Petitioner in the Trojan immediately following the said explosion or explosions and fire.

XVI.

Petitioner, while not admitting that it is liable for any loss of life, personal injury or property damage, and reserving the right to contest in this or any other Court any liability therefor, desires to limit its liability, if any, for each and all claims whether for loss of life, personal injury, loss of property or damages in any manner arising out of the said explosion or explosions and fire and claims the benefit of the limitation of and exoneration from liabilities provided for in the Act of March 3, 1851, entitled: "Act to Limit the Liability of Shipowners and for Other Purposes," 46 U.S.C., 183-189, as now or hereafter amended and supplemented and as implemented by the Rules of Practice in Admiralty and Maritime Cases of the Supreme Court and the rule of this Honorable Court governing proceedings in admiralty.

XVII.

Petitioner, United States of America, being a corporation sovereign, is exempt from providing bonds or stipulations (28 U.S.C., 2408).

XVIII.

All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, Petitioner prays:

1. That this Honorable Court issue a monition against all persons claiming damages for any loss, damage or injury occurring as described in this

petition or asserting claims in respect of which Petitioner seeks exoneration of or limitation of its liability herein, citing them to file their respective claims under oath with the Clerk of this Court, and to serve on or mail to the proctors for Petitioner a copy thereof on or before a date to be named in the said monition, and that public notice of such monition be given, all as provided by law and by the rules of the Supreme Court and of this Court governing proceedings in admiralty; and that an injunction issue against the institution or prosecution of any suits, actions or legal proceedings of any nature or description whatsoever, in any Court whatsoever, except in this proceeding, against Petitioner in respect of any claim or claims arising out of or in connection with the said explosion or explosions and fire on the Trojan, or subject to limitation in these proceedings, until the hearing and determination of these proceedings, and citing any person claiming damages as aforesaid, who shall within the foregoing time have filed a claim, intending to contest the right to exoneration or limitation, to file an answer to this petition and serve on or mail to proctors for Petitioner a copy thereof.

2. That this Honorable Court permit Petitioner to contest its liability for all loss, destruction, damage, death or injury occurring as described herein, and that Petitioner be adjudged and decreed not liable therefor; or, if Petitioner be adjudged or decreed liable therefor, then that the Court adjudge

and decree that such liability shall in no case exceed the amount or value of the interest of Petitioner in and to the Trojan as the same existed after the said explosion or explosions and fire, as supplemented, if necessary, in accordance with 46 U.S.C., Sec. 183(b), and that the amount of such interest be divided pro rata among such claimants as may duly prove their claims in proportion to the amount of their several claims as adjudged by this Court and in accordance with law, and that a decree be entered discharging Petitioner from all further liability.

3. That, at the appropriate time, the Court consolidate this action with the Petition of Sheffield Tankers Corporation, Admiralty No. 27543, now on file.

4. That Petitioner may have such other, further or different relief as may be deemed meet and just in the premises.

LLOYD H. BURKE,
United States Attorney;

/s/ KEITH R. FERGUSON,
Special Assistant to the
Attorney General;

/s/ GRAYDON S. STARING,
Attorney, Admiralty and Shipping Section, De-
partment of Justice, Proctors for Petitioner.

Duly verified.

[Endorsed]: Filed May 2, 1958.

[Title of District Court and Cause.]

**RESTRAINING ORDER AND ORDER
DIRECTING ISSUANCE OF MONITION**

A petition having been filed herein on May 2, 1958, by the United States of America as Owner of the Steam Tanker Trojan for exoneration from or limitation of its liability against any and all claims arising out of or in connection with an explosion or explosions and fire aboard the Trojan on January 29, 1957, at the shipyard of Todd Shipyards Corporation in Alameda, California, all as more particularly described in the petition, resulting in the loss, death, injuries and damages stated in the petition; and

It Appearing that the petitioner, United States of America, is not required to furnish any bond or stipulation; and

It Further Appearing that on December 20, 1957, Todd Shipyards Corporation, as cross-respondent, filed, in that certain action in the United States District Court for the Northern District of California entitled *Todd Shipyards Corporation vs. the Steam Tanker Trojan*, Admiralty No. 27506, an impleading petition against the United States of America, alleging that Todd Shipyards Corporation was damaged by the explosions and fire aboard the Trojan, January 29, 1957, in an unspecified amount dependent upon claims made against Todd Shipyards Corporation, and claiming the recovery of all such damages from the United States of

America, on the basis of alleged acts and failures to act of Petitioner as owner of the Trojan (ex Jeanny) and that, pursuant to an order of consolidation dated April 28, 1958, the said action, Admiralty No. 27506, was consolidated with, and under the caption of, that certain action in the United States District Court for the Northern District of California entitled, In the Matter of the Petition of Sheffield Tankers Corp., etc., Admiralty No. 27543; and

It Further Appearing that on April 8, 1958, Todd Shipyards Corporation, as libelant, filed, in that certain action in the United States District Court for the Northern District of California entitled Todd Shipyards Corporation vs. United States of America, Admiralty No. 27702, a libel against the United States of America, alleging that Todd Shipyards Corporation was damaged by the explosions and fire aboard the Trojan, January 29, 1957, in an amount in excess of \$8,000,000.00, and claiming the recovery of all such damages from the United States of America, on the basis of alleged acts and failures to act of Petitioner as owner of the Trojan (ex Jeanny); and

It Further Appearing that on April 8, 1958, Todd Shipyards Corporation, as plaintiff, filed, in that certain action in the United States District Court for the Northern District of California entitled Todd Shipyards Corporation vs. United States of America, Civil No. 37181, a complaint against the United States of America, alleging that

Todd Shipyards Corporation was damaged by the explosions and fire aboard the Trojan, January 29, 1957, in an amount in excess of \$8,000,000.00, and claiming the recovery of all such damages from the United States of America, on the basis of alleged acts and failures to act of Petitioner as owner of the Trojan (ex Jeanny); and

It Further Appearing that no claim has been filed with Petitioner and no suits have been commenced against Petitioner as owner of the Trojan more than six months previous to the filing of its petition, claiming or seeking to recover damages for loss, death or personal injuries arising by reason of the said explosion or explosions and fire; now, on motion of Petitioner,

It Is Hereby Ordered that the commencement, institution or prosecution of any and all suits, actions, libels, or legal proceedings of any nature or description whatsoever, including particularly the impleading petition, libel and complaint described above, against Petitioner, except in this limitation of liability proceeding, in respect to any claim for loss, damage, or injury, whether of or to life or persons or property, in any manner arising out of the explosion or explosions and fire aboard the steam tanker Trojan on January 29, 1957, be, and the same are, hereby stayed and restrained until the hearing and determination of this proceeding; and

It Is Further Ordered that a monition issue out of and under the seal of this Court against any

and all persons, firms, corporations, or parties claiming damages from or against Petitioner by reason of any loss, damage, injury, or destruction, whether of or to life or persons or property, in any manner arising upon or out of the explosion or explosions and fire aboard the steam tanker Trojan on January 29, 1957, as set forth in the petition, citing and admonishing them and each of them to file their claims under oath with the Clerk of this Court and serve on or mail to petitioner's proctors, Lloyd H. Burke, Esq., United States Attorney; Keith R. Ferguson, Esq., Special Assistant to the Attorney General, and Graydon S. Staring, Esq., Attorney, Admiralty and Shipping Section, Department of Justice, Room 447-A (Box 502), Post Office Building, Seventh and Mission Streets, San Francisco 1, California, a copy thereof on or before the 17th day of June, 1958, or within such further time as the Court may grant, or be defaulted, and citing any person claiming damages as aforesaid, who shall within the foregoing time have filed his claim under oath and who intends to contest the right to exoneration or limitations, to file an answer to such petition and serve a copy thereof on proctors for Petitioner; and

It Is Further Ordered that public notice of such monition be given by the United States Marshal for the Northern District of California, Southern Division, by causing a Notice substantially as set forth under and pursuant to Rule 51 of the Admiralty Rules of the Supreme Court of the United

States to be published in The Recorder, a newspaper printed and published in the City and County of San Francisco, State of California, at least once a week for four consecutive weeks before the return day of the said monition; and

It Is Further Ordered that further notice of such monition be given by the United States Marshal by causing copies of the said Notice to be posted in three public places in the City and County of San Francisco, State of California; and

It Is Further Ordered that not later than the day of second publication a copy of such Notice and a copy of Supreme Court Rule 52 be mailed by Petitioner or its proctors to Todd Shipyards Corporation, 153 California Street, San Francisco, California, and to McCutchen, Thomas, Matthew, Griffiths & Greene, and Russell A. Mackey, Esq., 1400 Balfour Building, San Francisco 4, California, its proctors and attorneys, and to the last known address of each of those persons known to have lost their lives following said explosion or explosions and fire;

It Is Further Ordered that service of this order as a restraining order be made by Petitioner by mailing a copy of this order to Todd Shipyards Corporation, and to McCutchen, Thomas, Matthew, Griffiths & Greene, and Russell A. Mackey, Esq., its proctors and attorneys, and to the last known address of each of those persons known to have lost their lives following the explosion or explo-

sions and fire and, in any further suits or other proceedings, by delivery by the United States Marshal of a copy of this order to the persons, firms, or corporations to be restrained, or their attorneys or proctors.

Dated: May 2, 1958.

/s/ LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed May 2, 1958.

[Title of District Court and Cause.]

CLAIM OF TODD SHIPYARDS
CORPORATION

Comes now Todd Shipyards Corporation, a corporation (hereinafter called "Todd"), and makes claim against petitioner United States of America (hereinafter called the "Government"), and alleges on information and belief as follows:

I.

Todd is and at all the times herein mentioned has been a corporation duly organized and existing under and by virtue of the laws of the State of New York and at all of said times owned, operated, managed, leased or controlled a certain ship repair yards and facilities in Alameda, California, within the jurisdiction of this Honorable Court.

II.

Sheffield Tankers Corporation, formerly named Rotary Tankers Corporation (hereinafter called "Sheffield"), is and at all the times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Delaware. That on and at all times subsequent to December 26, 1956, said Sheffield owned, operated, managed, controlled and was in possession of the T-2 type steam tank vessel Trojan, formerly named the Jeanny (hereinafter called the "Trojan").

III.

On or about December 26, 1956, and prior thereto, the Government owned, operated, managed, controlled and was in possession of said tank vessel Trojan, then named the Jeanny, bearing Official No. 247177, as a merchant vessel of the United States of America.

IV.

On or about December 26, 1956, the Government for good and valuable consideration, sold, delivered and transferred the said Trojan to Sheffield (then named Rotary Tankers Corporation), together with her apparel and outfit, and further separately sold for good and valuable consideration to said Sheffield, among other things, a quantity of oil located, among other tanks, in said vessel's port and starboard after bunker tanks. That all the oil so sold was sold by the Government as fuel oil of the character customarily used as bunker oil and

commonly described as Bunker C fuel oil (herein-after called "Bunker C fuel oil").

V.

Thereafter and on or about January 4, 1957, Sheffield (then named Rotary Tankers Corporation), entered into a contract in writing with Todd for the performance by Todd at its ship repair yard, Alameda, California, of certain specified repairs, and to supply certain materials, all in connection with the preparation of said vessel for continued service as a merchant vessel of the United States of America. Thereafter the vessel was delivered to Todd's plant at Alameda, California, for such repairs.

VI.

On January 29, 1957, while said Trojan was lying afloat at Todd's ship repair yard, Alameda, California, as aforesaid, an explosion or explosions occurred in the port bunker tank and machinery spaces of said vessel, followed by fire. That said explosion or explosions and fire occurred while Sheffield, its crew, agents, servants, employees and representatives were engaged in heating the oil in the said bunker tanks and pumping said oil from the bunker tank to the boiler room and lighting of the boiler room fires and using said oil in connection therewith.

VII.

Said explosion or explosions and fire resulted in extensive physical and other damage to property of Todd and damage to the said Trojan and

Sheffield, including damages for detention of the vessel during the course of repair of said damage. Said explosion or explosions and fire also resulted in the death of one member of the crew of said Trojan and death of and personal injuries to others, including employees of Todd and certain subcontractors of Todd.

VIII.

By reason of the foregoing: Todd sustained extensive direct and other damages in the amount of approximately One Hundred Thousand Dollars (\$100,000); a number of suits in admiralty and actions at law have been commenced against Todd, individually, and against Todd and Sheffield, jointly and severally, on account of damages resulting from the personal injuries and deaths aforesaid; a cross-libel in admiralty has been commenced by Sheffield against Todd for physical damages sustained by the said Trojan and damages for detention of said vessel and for indemnity for the amount Sheffield may be adjudged and required to pay on account of the personal injury and death claims aforesaid, all in an aggregate amount in excess of Eight Million Dollars (\$8,000,000). Other claims may be asserted and suits filed in respect to matters concerning which claimant is not now informed in which event claimant will amend and asks leave to amend this claim accordingly.

IX.

At and prior to the time the Government sold, delivered and transferred said Trojan to Sheffield

and at the time the Government sold and delivered the oil in the aft bunker tanks of said vessel to Sheffield and at the time said vessel was placed by Sheffield at Todd's ship repair yard for the aforesaid repairs, and on January 29, 1957, at the time the said explosion or explosions and fire occurred, said oil was not Bunker C fuel oil as represented and sold, but, on the contrary, in violation of the applicable statutes, regulations and said representations, was an admixture of highly volatile, inflammable, explosive and inherently or imminently dangerous substances which in fact made it highly volatile, inflammable, explosive and imminently dangerous or which became imminently explosive and dangerous and resulted in its throwing off vapors in explosive and dangerous quantities when heated or subjected to the intended uses and operations of fuel oil on tanker vessels such as the Trojan.

X.

Todd alleges that said explosion or explosions and fire which occurred on January 29, 1957, on board the Trojan with consequent extensive physical damage and other damage and personal injuries and death were, or may be held to be, the primary, proximate or efficient result of the fault and negligence of the Government by reason of the matters and things alleged herein. If Todd should be held to be under any liability therefor, which liability Todd hereby specifically denies, then any and all such liability would ultimately be the primary, proximate or efficient result of the fault and negli-

gence of the Government in that, among other things which will be shown at the trial herein, the Government, acting by and through the Maritime Administration, its agents, servants, representatives, and employees having custody, possession, supervision and control over the said Trojan and of the oil in her aft port and starboard bunker tanks, and those servants, agents, employees and/or representatives in charge of or having jurisdiction over bids, tenders and contract or contracts for the sale, transfer and delivery of said vessel, its apparel, appurtenances, inventory and of the fuel oil, consumable broached and unbroached stores; negligently:

1. Breached its representation, express or implied that the oil located in the vessel's port and starboard bunker tanks was Bunker C fuel oil;
2. Failed and neglected to inspect, sample and analyze the oil located in the port and starboard aft bunker tanks of said vessel before the sale and delivery thereof as consumable Bunker C fuel oil for said vessel;
3. Failed and neglected to inspect, sample and analyze the said oil before the sale and delivery of the vessel together with its appurtenances, inventory and equipment including the oil located in the port and starboard bunker tanks of said vessel;
4. Failed and neglected to make a proper or any gas or explosive mixture test of the port and

starboard aft bunker tanks of said vessel prior to the sale and delivery thereof to ascertain the condition and explosibility thereof and of the material in said tanks;

5. Failed and neglected to ascertain prior to the time of the sale and delivery of said vessel, its appurtenances, equipment and inventory and of the oil located in said vessel's port and starboard aft bunker tanks, that said material therein contained was admixed with highly volatile, inflammable, and explosive substances which rendered the same imminently and inherently dangerous when subjected to heating and normal usage as fuel and bunker oil.

6. Sold and delivered said vessel, her appurtenances, equipment and inventory and the oil in its port and starboard aft bunker tanks which oil was admixed with highly volatile, explosive and imminently or inherently dangerous substances without disclosure of such conditions;

7. Sold and delivered the oil contained in the port and starboard bunker tanks of said vessel, which oil was admixed with highly volatile, inflammable and imminently dangerous substances or which mixture would become explosive and imminently dangerous when subjected to the uses and operations intended.

8. Sold and delivered the oil contained in the port and starboard aft bunker tanks of said vessel representing the same expressly or impliedly, to

be Bunker C fuel oil and without disclosure that such material was admixed with highly volatile, inflammable, explosive and imminently or inherently dangerous substances;

9. Sold and delivered the oil contained in the port and starboard aft bunker tanks of said vessel as Bunker C fuel oil in contravention of the applicable provisions of Title 46, Code of Federal Regulations Parts 30-39, inclusive, "Rules and Regulations for Tank Vessels," and particularly Article 35.25-10 thereof;

10. Sold and delivered the material contained in the port and starboard aft bunker tanks of said vessel as Bunker C fuel oil in contravention of the applicable provisions of Title 46, U. S. Code, Section 881, and rules and regulations of the American Bureau of Shipping entitled, "Rules for the Classification and Construction of Steel Vessels," and particularly Section 36, Art. 24 thereof.

XI.

Todd alleges that said explosion or explosions followed by fire were or may be held to have been the primary, proximate or efficient result of the breaches, defaults and negligence of the Government as alleged herein.

XII.

By reason of the premises any and all such liability should be borne by the Government and if Todd should be held under any liability by reason of any of the matters alleged herein then and in

such event Todd is entitled to be indemnified by the Government to the extent of any such liability.

Wherefore, claimant Todd Shipyards Corporation, prays that it have and recover from the petitioner United States of America,

(a) Damages sustained by it herein to the amount of approximately One Hundred Thousand Dollars (\$100,000);

(b) For indemnity against any sum or sums which it may be adjudged to pay by reason of any of the matters or things stated or referred to herein, together with legal fees and expenses incurred in defending claims and suits asserted against it;

(c) Costs of suit; and

(d) Such other and further relief as to the Court may seem just and proper.

McCUTCHEON, THOMAS, MATTHEW, GRIFITHS & GREENE,

/s/ CROWELL, ROUSE &
VARIAN,

Proctors for Claimant, Todd
Shipyards Corporation.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed June 12, 1958.

[Title of District Court and Cause.]

ANSWER OF CLAIMANT TODD
SHIPYARDS CORPORATION

Comes now claimant Todd Shipyards Corporation and answering the petition in the above entitled cause alleges, upon information and belief, the following:

I.

Admits the allegations of Article I of the said petition.

II.

Admits the allegations of Article II of the said petition.

III.

Admits the allegations of Article III of the said petition.

IV.

Admits that on or about December 26, 1956, the petitioner sold and delivered the Steam Tanker Trojan (ex Jeanny) to Rotary Tankers Corporation, a Delaware Corporation, which has since changed its name and is now known as Sheffield Tankers Corporation. Except as herein admitted the said claimant alleges that it does not have sufficient information to answer the allegations of Article IV of the said petition and therefore denies the same and demands strict proof thereof in and so far as material.

V.

Admits the allegations of Article V of the said petition.

VI.

Denies the allegations of Article VI of the said petition.

VII.

Admits that at no time during the petitioner's ownership of the Trojan was she operated but at all such times was maintained as a dead ship by the United States Maritime Administration and that at and about the time of the explosion or explosions and fire aboard the Trojan, January 29, 1957, petitioner had no custody or control of the vessel and no servants, agents or employees on or about the vessel or participating in any activities with reference to her repairs or the said explosion or explosions and fire. Except as herein admitted the said claimant denies the allegations of Article VII of the said petition.

VIII.

Admits that the value of the Trojan following the explosion or explosions and fire did not exceed \$1,918,655.63, admits that the value of petitioner's interest at said time was nil and that there was no pending freight, admits that the gross tonnage of the vessel was 10,296 tons and admits that at the time of the filing of the petition the vessel was at Alameda, California in the possession of Sheffield Tankers Corporation, and except as herein admitted alleges that it is without information or belief concerning the allegations of Article VIII of the said petition and therefore denies the same and

demands strict proof thereof if and so far as material.

IX.

Admits the allegations of Article IX of the said petition.

X.

Admits the allegations of Article X of the said petition.

XI.

Admits that a libel against the petitioner was filed in this Court on April 2, 1958, and hereby refers to the said libel, No. 27702 in Admiralty, for its statement of the allegations of the claimant therein.

XII.

Admits that a complaint against the petitioner was filed in this Court on April 2, 1958, and hereby refers to the said complaint, Civil No. 37181, for its statement of the allegations of the claimant therein.

XIII.

Admits the allegations of Article XIII of the said petition, except that the said claimant alleges on information and belief as follows:

1. The total amount of damages claimed in the suit by John Polk and others is \$1,015,000.00.

2. The suit by Charles Cecil McNaughton was removed to the above entitled court and is now pending therein as Civil No. 36484.

XIV.

Admits the allegations of Article XIIIV of the said petition.

XV.

Admits the allegations of Article XV of the said petition.

XVI.

Admits that the said petitioner by its petition claims limitation of and exoneration from liability, and except as so admitted the said claimant denies the allegations of Article XVI of the said petition.

XVII.

Admits the allegations of Article XVII of the said petition.

XVIII.

Denies the allegations of Article XVIII of the said petition.

Wherefore, claimant Todd Shipyards Corporation prays:

- (1) that the petition be dismissed;
- (2) if the petition is not dismissed, that it have judgment in accordance with its claim;
- (3) that it have judgment for its cost of suit; and
- (4) that it have such other relief as to the Court may seem just.

/s/ McCUTCHEON, THOMAS, MATTHEW,
GRIFFITHS & GREENE,

/s/ CROWELL, ROUSE & VARIAN,
Proctors for Claimant Todd
Shipyards Corporation.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed June 12, 1958.

[Title of District Court and Cause.]

**NOTICE OF PETITION FOR EXONERATION
FROM OR LIMITATION OF LIABILITY**

Notice is given that the United States of America has filed a petition pursuant to Title 46, United States Code, Sections 183-189, claiming the right to exoneration from or limitation of liability for all claims arising out of the explosion or explosions and fire on board the steam tanker Trojan in the shipyard of Todd Shipyards Corporation, at Alameda, California, on January 29, 1957.

All persons having such claims must file them under oath as provided in United States Supreme Court Admiralty Rule 52 with the Clerk of this Court and serve on or mail to petitioner's proctors, Lloyd H. Burke, Esq., United States Attorney, Keith R. Ferguson, Esq., Special Assistant to the Attorney General, and Graydon S. Staring, Esq., Attorney, Admiralty and Shipping Section, Department of Justice, a copy on or before 9:30 a.m. on the 17th day of June, 1958, or be defaulted. Personal attendance is not required.

Any claimant desiring to contest the claims of the petitioner must file an answer to the said petition as required by United States Supreme Court Admiralty Rule 53 and serve on or mail to the petitioner's proctors a copy on or before 9:30 a.m. on the 17th day of June, 1958, or be defaulted.

FRANK O. BELL,
United States Marshal.

By /s/ JOHN A. ROSEEN,
Deputy Marshal.

Received: May 2, 1958.

[Endorsed]: Filed June 17, 1958.

[Title of District Court and Cause.]

MONITION

The President of the United States, to the Marshal of the United States of America for the Northern District of California, Greeting:

Whereas, a petition was filed in the United States District Court for the Northern District of California, Southern Division, on the 2nd day of May, 1958, by the United States of America, a sovereign nation, praying for exoneration from or limitation of its liability, if any, concerning the loss, damage, injury or destruction occasioned by or resulting from the explosion or explosions and fire aboard

the steam tanker Trojan, on January 29, 1957, in the shipyard of Todd Shipyards Corporation at Alameda, California, where the Trojan was then lying for repairs in preparation for a voyage not yet begun, all as more fully set forth in the said petition, and praying for the issuance of monition as provided by law and the rules of this Court; and

Whereas, the petitioner United States of America is exempt from filing bonds or stipulations; and

Whereas, an order has been entered herein that a monition issue as prayed for; now, therefore

You are commanded to cite and admonish all persons, firms, corporations and parties claiming damages against the Petitioner or its agents for any loss, damage, injury or destruction of any kind resulting from the said explosion or explosions and fire, and all persons asserting claims in respect of which the Petitioner by the said petition seeks exoneration from or limitation of liability, that each and all such persons file their respective claims with the Clerk of this Court and serve on or mail to the proctors for the Petitioner a copy thereof on or before June 17, 1958, at 9:30 o'clock a.m. of the said day, or be defaulted; and

You are further commanded to cite and admonish such claimants as may desire to contest the Petitioner's right to exoneration from or limitation of its liability to appear and file an answer to the said petition and serve on or mail to proctors for

the Petitioner a copy of such answer, on or before 9:30 a.m. on June 17, 1958, or be defaulted; and

You are further commanded to cause public notice of this monition to be given substantially in the form prescribed by United States Supreme Court Admiralty Rule 51, by publishing such notice of monition once each week for four consecutive weeks before the return day of this monition in The Recorder, a daily newspaper of general circulation, printed and published in the City of San Francisco, State of California; and

You are further commanded to cause copies of the said notice to be posted in three public places in the City and County of San Francisco, State of California.

And what you have done in the premises do you then make return to this Court together with this writ.

Witness the Honorable Louis E. Goodman, United States District Judge, this 2nd day of May, 1958.

[Seal] CARL W. CALBREATH,
Clerk.

By /s/ J. P. WELSH,
Deputy.

LLOYD H. BURKE,
United States Attorney.

/s/ KEITH R. FERGUSON,
Special Assistant to the
Attorney General.

/s/ GRAYDON S. STARING,
Attorney, Admiralty and Shipping Section, Department
of Justice, Proctors for Petitioner.

Received: May 2, 1958.

[Endorsed]: Filed June 17, 1958.

[Title of District Court and Cause.]

MARSHAL'S RETURN

I hereby certify and return that, as directed by an order made by the above-entitled Court on the 2nd day of May, 1958, and as commanded by the Monition issued on the same day under the seal of the said Court, I have cited and admonished all persons, firms, corporations, and parties claiming damages from or against Petitioner or its agents for any loss, damage, injury or destruction of any kind resulting from the explosion or explosions and fire aboard the steam tanker Trojan, on January 29, 1957, in the shipyard of Todd Shipyards Corporation at Alameda, California, as set forth in the Petition, and all persons asserting claims in respect of which Petitioner seeks exoneration from or limitation of liability, to file their claims under oath with the Clerk of this Court and serve on or mail to Petitioner's proctors, Lloyd H. Burke, Esq., United States Attorney, Keith R. Ferguson, Esq., Special Assistant to the Attorney General and Graydon S. Staring, Esq., Attorney, Admiralty and Shipping Section, Department of Justice, Room

447-A, Post Office Building, Seventh and Mission Streets, San Francisco 1, California, a copy thereof on or before 9:30 a.m. on the 17th day of June, 1958, or be defaulted, and have cited such claimants as may desire to contest Petitioner's right to exoneration from or limitation of its liability, to appear and file an answer to the said petition and serve on or mail a copy thereof to proctors for Petitioner on or before 9:30 a.m. on June 17, 1958, or be defaulted; that I have given public notice of the said Monition by causing a notice substantially in the form prescribed by Rule 51 of the Admiralty Rules of the Supreme Court of the United States to be published once each week for four consecutive weeks before the return day of the Monition in The Recorder, a daily newspaper of general circulation, printed and published in the City of San Francisco, State of California, as shown by the attached affidavit by the principal clerk of The Recorder Printing and Publishing Company, printers and publishers of the said newspaper, which affidavit is hereby referred to and made a part hereof as if fully set forth and incorporated herein; and that I have given further public notice of the said Monition by posting copies of the said notice in three public places in the City and County of San Francisco, State of California, to wit, one in the Post Office Building, Seventh and Mission streets, one at the Appraisers Building, 630 Sansome Street, and one at the City Hall, McAllister and Polk Streets.

I hereby certify and return that there have been

no further suits or other proceedings wherein it has been necessary to deliver a copy of the Restraining Order to any persons, firms, or corporations.

Dated: San Francisco, California, June 12, 1958.

[Seal] /s/ FRANK O. BELL,
United States Marshal.

[Endorsed]: Filed June 17, 1958.

[Title of District Court and Cause.]

CLAIM OF THE TRAVELERS INSURANCE COMPANY

Comes now The Travelers Insurance Company, a corporation, and makes claim against Petitioner United States of America as follows:

Article I.

That at all times mentioned herein The Travelers Insurance Company, hereinafter called Travelers, was and now is a corporation, duly organized and existing under and by virtue of the laws of the State of Connecticut, and duly licensed to carry on an insurance business, including compensation insurance in the State of California.

Article II.

That at all times mentioned herein Travelers was the compensation insurer of Todd Shipyards

Corporation, hereinafter referred to as Todd, and that Todd was on the 29th day of January, 1957, making repairs on the tanker Trojan, and such other work as was deemed necessary to the reactivation of said vessel. That said vessel was at said time lying afloat at Todd's Shipyard, Alameda County, California.

Article III.

That on said 29th day of January, 1957, explosions occurred on board the Trojan and were followed by fire. For convenience the said explosions and fire will be referred to hereinafter as the explosion. That the explosion caused fatal injuries to Max J. Gladstone and injuries to Frank Davis and Norman Westby. These men were employees of Todd and were engaged in the work of repair and reactivation being carried out by Todd. That by reason of the premises the said men were business invitees of Sheffield Tankers Corporation, hereinafter called Sheffield, the said owner of the tanker Trojan.

Article IV.

Sadie Gladstone, the widow of Max J. Gladstone, deceased, Frank Davis and Norman Westby elected to take compensation and benefit under and pursuant to the provisions of the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424 c. 509, sec. 3, 33 U.S.C. sec. 903 et seq.). Because of said election the Deputy Commissioner for the 13th Compensation District, U. S. Department of Labor, Bureau of Employees Compensation, entered awards

in the three cases. Travelers has as compensation insurance carrier up to June 1, 1958, which includes a period before as well as after the said awards, paid the following:

To Sadie Gladstone, compensation totaling \$1,-842.75 and \$400 burial expenses.

To Frank Davis, \$119.93 compensation.

To Norman Westby, \$31.18 compensation.

That the compensation benefits may, under said award to said Gladstone, continue for a period which has not and cannot now be determined. That Travelers prays leave to amend its claim to set out any additional compensation or benefits under said Act or award paid to Sadie Gladstone subsequent to said date.

Article V.

That by reason of the circumstances above set out, Travelers was subrogated to the right of said parties, and each of them, namely, Sadie Gladstone, Frank Davis and Norman Westby, to any claim for damages against the United States of America.

Article VI.

Upon information and belief, that on or about December 26, 1956, and prior thereto, the United States of America, hereinafter called the Government, owned, managed, controlled and was in possession of said Trojan (then named the Jeanny) bearing official number 247177, a merchant vessel of the United States of America.

Article VII.

Upon information and belief, that on or about December 26, 1956, the Government, for valuable consideration pursuant to sale theretofore made, delivered and transferred the said Trojan to Sheffield (then named Rotary Tankers Corporation), together with her apparel and outfit; and that on or about said date separately sold for valuable consideration to said Sheffield, among other things, a quantity of oil located in said vessel's port and starboard after bunker tanks. That all of the said oil was sold by the Government as fuel oil of the character customarily used as bunker fuel oil and commonly described as "Bunker C."

Article VIII.

Upon information and belief, that thereafter and on or about January 4, 1957, said Sheffield entered into a contract in writing with Todd for the performance by Todd at its ship repair yards at Alameda, California, of certain reactivation repairs, and to supply certain materials, all in connection with the repair and reactivation of said vessel for continued service as a merchant vessel of the United States of America. Thereafter, the said vessel was delivered to Todd at Alameda, California, for the making of such repairs necessary to the reactivation of said vessel and that Todd engaged many workmen (of several crafts), including those hereinabove named, to go on board said vessel and make said repairs.

Article IX.

Upon information and belief, that on January 29, 1957, while said Trojan was lying afloat Todd's ship repair yards, Alameda, California, an explosion or explosions occurred in the after part of said vessel, including certain machinery and boiler spaces, followed by fire. That said explosions and fire (hereinafter referred to as explosion) occurred while Sheffield, its servants, employees and representatives were engaged in heating the oil in said bunker tanks which, as hereinabove set out, had been sold by the Government to Sheffield as Bunker C, and pumping said fuel oil from the port bunker tank to the boiler room and lighting off the boiler room fires in connection with the preparation of reactivating said vessel that it could be put in operation as a merchant vessel of the United States of America.

Article X.

That the said explosion caused extensive physical damage to the said Trojan and caused fatal injuries to several employees of Todd and one member of the ship's crew then on board said vessel, and injuries in varying degrees of severity to over forty others, who were employees of Todd; also fatal injuries to a member of the ship's crew, an employee of Sheffield, and injuries to two other employees of a subcontractor, who had entered into an agreement with Todd to do a part of the repair work to said Trojan.

Article XI.

Upon information and belief, that the Government had knowledge that Sheffield had purchased the Trojan for the purpose of making reactivation repairs on the Trojan and operating said vessel as a merchant vessel of the United States of America; and further that the Government had actual knowledge that the said reactivation repairs had been commenced by Todd in its shipyard and that numerous employees and others would and had been going on board said vessel for various purposes, all in connection with the repair and reactivation of said Trojan.

Article XII.

Upon information and belief, that the Government negligently failed to make an analysis to determine whether said fuel oil in the after bunker tanks of the Trojan was in fact Bunker C, and represented either actually or impliedly to Todd and their employees, agents, and servants and all others who would go on board said vessel in connection with making reactivation repairs and fitting said vessel to be operated as a merchant vessel of the United States of America, that said fuel oil was Bunker C.

Article XIII.

Upon information and belief, that the aforesaid negligence of the Government and its representation were proximate causes of the said explosion resulting in damage to property and persons.

Article XIV.

Upon information and belief, that the said bunker fuel oil contained in the bunker tanks contained in the after part of said Trojan was not in fact Bunker C fuel oil, but, on the contrary, was an admixture of highly volatile, inflammable explosive and dangerous substances which caused said fuel oil to throw off, when heated, highly volatile, inflammable, explosive, and dangerous vapor in explosive and injurious quantities; and that the heating of said fuel oil in connection with the repair and reactivation of said Trojan was work customarily done in connection with preparation or the operation of a merchant vessel and was to be expected by the Government that it would have been.

Article XV.

That the representation of the Government that the oil contained in the after bunker tanks of said vessel was Bunker C and negligent failure to ascertain whether in fact it was Bunker C was in contravention of the applicable provisions of 46 Code of Federal Regulations, Parts 30-39, inclusive, "Rules and Regulations for Tanker Vessels," and particularly, Art. 35.25-10 thereof, and also in contravention of the provisions of Title 46 U.S.C., Sec. 81, Rules and Regulations of the American Bureau of Shipping, "Rules for the Classification and Construction of Steam Vessels," and particularly, Sec. 26, Art 24 thereof.

Article XVI.

That as a result of the fatal injuries and death of Max J. Gladstone, Sadie Gladstone has been deprived of the support of said decedent upon whom she was dependent and from whom she received very substantial contribution and that the said Sadie Gladstone has suffered and will continue to suffer pecuniary loss by reason of the deprivation to her of the support, love, affection, comfort and society of the said decedent. That by reason of the premises, Sadie Gladstone has suffered damages in the amount of \$100,000.00.

Article XVII.

That the said Frank Davis has, because of said injuries, suffered damages by reason of loss of earnings and pain and suffering in the amount of \$2,500.00; and the said Norman Westby has suffered damages by reason of loss of earnings and pain and suffering in the amount of \$2,000.

As and for a further claim, Travelers alleges:

Article XVIII.

Refers to the allegations of Articles I and II above and by such reference incorporates said allegations and makes the same the allegations of this article.

Article XIX.

That the said explosion which occurred on the Trojan on said 29th day of January, 1957, caused

injuries to William Martin Maas, Jr., from which he died. That the said William Martin Maas, Jr., was an employee of Todd and engaged in the work of repairs and reactivation being carried out by Todd on board said vessel. That by reason of the premises the said William Martin Maas, Jr., was a business invitee of Sheffield.

Article XX.

Refers to the allegations of Articles VI, VII, VIII, IX, X, XI, XII, XIII, XIV and XV above and by such reference incorporates said allegations and makes the same the allegations of this article.

Article XXI.

Upon information and belief, that the said William Martin Maas, Jr., left no dependents who are entitled to compensation or other benefits under the Longshoremen's and Harbor Workers' Compensation Act and that the said William Martin Maas, Jr., left him surviving no person or personal representative who is entitled to bring suit for damages, on account of his death.

Article XXII.

That Travelers has paid to the Secretary-Treasurer of the United States through the Deputy Commissioner of the 13th Compensation District the sum of \$1,000.00, pursuant to and as required by the said Act (33 U.S.C.A., Section 944).

Article XXIII.

That by reason of said payment of \$1,000.00, any cause of action for wrongful death of said William Martin Maas, Jr., has been assigned by operation of law to Travelers (33 U.S.C.A. under Section 933(c)). That in the premises Travelers is entitled to damages in the sum of \$1,000.00.

As and for a further claim, Travelers alleges:

Article XXIV.

Refers to the allegations of Articles I and II above, and by such reference incorporates said allegations and makes the same the allegations of this Article.

Article XXV.

That the said explosion which occurred on the Trojan on said 29th day of January, 1957, caused injuries resulting in the death of, in addition to Max J. Gladstone and William Martin Maas, Jr., named above, the following persons: William L. Evans, Robert P. Gainey, Herbert J. Gauthier, Floyd Harper, Roosevelt McIntyre, Elbert N. Player and Pete Stanovich; and injuries to the following persons, in addition to Frank Davis and Norman Westby, named above: John Allison, James Archie, Oscar Asplind, Phillip Bressell, Charles Ballew, Rudey Bohm, Abrem Bitle, Clovis Campbell, John Casey, Thos. Chapman, Elmer Cleaver, Weldon Cochrane, James Coleman, Eddie Cobbs, Ted Carpenter, Henry Frison, Eugene Fitch, R. H. Hawthorne, Geo. Hinkley, John Hines, Willie

Howard, Silvert Hansen, Milton Johnson, K. C. Kahlert, Ulrich Kale, Lee Kilpatrick, James Lewis, Carl Larson, Theodore Moore, Wilfred Molden, Ruben May, Jr., Marion E. Oldham, John Polk, James Prater, Billie B. Rawson, Sam Roberts, Moses Rogers, Chester Smith, Alfred Stief, Clark Truax, Frank Tucker, Kee Welch, Willie Wise and Robert Wilcox.

Article XXVI.

Travelers is informed and believes and therefore alleges that the personal representatives of the foregoing deceased persons have filed or will file claim in these proceedings and that the persons listed above as having been injured have also filed claim or will file claim in these proceedings and that the persons listed above as having been injured have also filed claim or will file claim in this proceeding.

Article XXVII

That without the entry of a formal award, Travelers has paid compensation and benefits under the Longshoremen's and Harbor Workers' Compensation Act as indicated below:

Name	Death Cases	Statutory Medical Aid and Funeral Expenses
William L. Evans.....	\$ 15.00	
Robert P. Gainer.....	1,454.90	
Herbert J. Gauthier.....	1,850.00	
Floyd Harper	1,123.00	
Roosevelt McIntyre	
Elbert N. Player.....	15.00	
Pete Stanovich	400.00	

Injury Cases

Name	Compensation	Statutory Medical Aid	Total
John Allison	\$ 254.57	\$ 580.58	\$ 835.15
James Archie	956.57	3,947.69	4,904.26
Oscar Asplind	308.57	450.23	758.80
Phillip Bressell	80.00	136.89	216.89
Chas. Ballew	1,134.00	1,592.35	2,726.35
Rudey Bohme	80.00	10.00	90.00
Abrem Bitle	856.28	285.53	1,141.81
Clovis Campbell	378.00	881.93	1,259.93
John Casey	200.57	291.26	491.83
Thos. Chapman	1,064.57	1,084.91	2,149.48
Elmer Cleaver	1,998.00	4,703.57	6,701.57
Weldon Cochrane	1,188.00	899.87	2,087.87
James Coleman	486.00	279.59	765.59
Eddie Cobbs	69.43	2.34	71.77
Ted Carpenter		57.06	57.06
Henry Frison	370.28	692.76	1,063.04
Eugene Fitch	455.19	221.75	676.94
R. H. Hawthorne.....	80.00	64.15	144.15
Geo. Hinkley	848.57	477.15	1,325.72
John Hines	324.00	101.62	425.62
Willie Howard	69.43	125.52	194.95
Silvert Hansen			
Milton Johnson	123.43	430.31	553.74
K. C. Kahlert.....	80.00	22.60	102.60
Ulrich Kale	439.71	679.71	1,119.42
Lee Kilpatrick	432.00	82.05	514.05
James Lewis	69.43	15.00	84.43
Carl Larson	316.28	157.00	473.28
Theodore Moore	254.57	619.33	873.90
Wilfred Molden	1,458.00	901.21	2,359.21
Ruben May, Jr.....	1,998.00	2,829.34	4,827.34
Marion E. Oldham.....	817.28	2,249.15	3,066.43
John Polk	540.00	4,214.07	4,754.07
James Prater	486.00	72.33	558.33
Billie B. Rawson.....	80.00	366.73	446.73

Name	Injury Cases		Statutory Medical Aid	Total
	Compensation			
Sam Roberts	\$ 80.00		\$ 30.70	\$ 110.70
Moses Rogers	2,268.00		1,562.23	3,830.23
Chester Smith	2,106.00		8,230.23	10,336.23
Alfred Stief	308.57		154.03	462.60
Clark Truax	647.99		2,076.38	2,724.37
Frank Tucker	902.57		414.82	1,317.39
Kee Welch	686.57		1,351.90	2,038.47
Willie Wise	185.14		371.46	556.60
Robert Wilcox	2,052.00		1,242.54	3,294.54

That the foregoing amounts represent payments made to and including June 14, 1958, and Travelers begs leave to set up by way of amendment any additional payments made.

Article XXVIII.

That the persons whose names are set out hereinabove were all employees of Todd and were working on board the said Trojan and engaged in making repairs and other work in connection with the reactivation being carried out by Todd. That by reason of the premises said persons were business invitees of Sheffield, the owner of the tanker Trojan.

Article XXIX.

Refers to the allegations of Article VI, VII, VIII, IX, X, XI, XII, XIII, XIV and XV above, and by such reference incorporates said allegations and makes the same the allegations of this article.

Article XXX.

That to the extent Travelers has paid compensa-

tion or medical benefits under the said Act, it is subrogated to the rights which arose by reason of injury to or death of the persons named in Article XXV above.

Wherefore, The Travelers Insurance Company, a corporation, prays judgment against Petitioner United States of America in the amount of \$100,000.00 damages suffered by Sadie Gladstone, \$2,500.00 damages suffered by Frank Davis, and \$2,000.00 damages suffered by Norman Westby; that said Travelers be awarded out of each judgment for damages in favor of each of said persons which may be paid, respectively: \$2,242.75, \$119.93 and \$31.18; that judgment be entered for said Travelers for \$1,000.00 by reason of the payment of said amount to the Secretary-Treasurer of the United States because of the death of William Martin Maas, Jr.; that out of any judgment entered against United States of America because of injury to, or because of the death of any person whose name appears in Article XXV above; that said Travelers be awarded the total amount paid under the Longshoremen's and Harbor Workers' Compensation Act, in each case, which amount is set out in Article XXVII above opposite each person named; and such additional amounts as may be paid or become due in future under the said Act or any award by reason of the death of or injury to any person named in any Article above; together with costs of suit herein incurred and such other and

further relief as this Honorable Court may deem meet and just in the premises.

DORR, COOPER & HAYS,

/s/ JAY T. COOPER,
Proctors for Claimant, The Travelers Insurance
Company.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed June 17, 1958.

[Title of District Court and Cause.]

ANSWER OF CLAIMANT
THE TRAVELERS INSURANCE COMPANY

Comes now claimant, The Travelers Insurance Company, a corporation, and answering the Petition in the above-entitled cause, admits, denies and alleges as follows:

I.

Admits the allegations of Article I.

II.

Admits the allegations of Article II.

III.

Admits the allegations of Article III.

IV.

Alleges that it does not have sufficient knowledge

or information to answer the allegations of Article IV and therefore denies the same; except that it admits on information and belief that the steam tanker Trojan (then named the Jeanny) was delivered to Rotary Tankers Corporation, a corporation, on or about December 26, 1956, which corporation has changed its name and is now known as Sheffield Tankers Corporation and will herein-after be referred to as Sheffield.

V.

Upon information and belief, admits the allegations of Article V.

VI.

Denies each and every, all and singular, the allegations of Article VI. Claimant has no knowledge or information as to the identity of the persons or parties referred to by Petitioner in said article as "others not known to Petitioner" and therefore can not answer that part of said article but reserves the right to do so when informed in that regard.

VII.

Upon information and belief, denies each and every, all and singular and allegations of Article VII, except that claimant admits that Petitioner had no custody or control of the vessel and that none of Petitioner's servants, agents, or employees were on or about the vessel or participating in any activities with reference to her repairs.

VIII.

Upon information and belief, admits the allegations of Article VIII.

IX.

Upon information and belief, admits the allegations of Article IX.

X.

Admits the allegations of Article X.

XI.

Upon information and belief, admits the allegations of Article XI.

XII.

Upon information and belief, admits the allegations of Article XII.

XIII.

Admits the allegations of Article XIII of the said petition, except that claimant alleges on information and belief as follows:

1. That the total amount of damages claimed in the suit by John Polk and others is \$1,015,000.00.
2. The suit by Charles Cecil McNaughton was removed to the above-entitled Court and is now pending therein as Civil No. 36484.

XIV.

Admits the allegations of Article XIV.

XV.

Admits the allegations of Article XV and in regard to the value of any interest of Petitioner, alleges that said Petitioner had no interest whatsoever in said vessel at said time.

XVI.

Denies each and every, all and singular the allegations of Article XVI, except that it admits that said Petitioner claims limitation of and exoneration from liabilities under certain acts, rules of practice and rules of this Honorable Court governing proceedings in admiralty.

XVII.

Admits the allegations of Article XVII.

XVIII.

Denies each and every, all and singular the allegations of Article XVIII, except to the extent that the allegations have been hereinabove admitted.

Wherefore, claimant The Travelers Insurance Company prays:

1. That the petition herein be dismissed;
2. That if the petition be not dismissed, that it have judgment in accordance with its claims filed herein;
3. That it have judgment for its costs of suit herein incurred; and

4. For such other and further relief as to this Honorable Court may seem meet and just in the premises.

DORR, COOPER & HAYS,

/s/ JAY T. COOPER,

Proctors for Claimant, The Travelers Insurance Company.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed June 17, 1958.

[Title of District Court and Cause.]

CLAIM OF ETHEL M. PLAYER

Ethel M. Player, hereby makes claim in the above-entitled proceeding for limitation of liability, and in support thereof alleges:

I.

That claimant is the surviving spouse and sole heir at law of Albert N. Player, deceased:

II.

Petitioner is and at all times mentioned herein was a sovereign nation.

III.

The Steam tanker Trojan (ex Jeanny) is and was at all material times a steel ocean-going T2 tanker, which petitioner alleges to be of 10,296 gross tons,

registered under the laws of the United States,
Official No. 247177.

IV.

On April 22, 1955, petitioner took title to the steam tanker Trojan (ex Jeanny) under a certain decree of forfeiture passed on that date by the United States District Court for the Northern District of California in the case of United States of America vs. Tanker Jeanny etc., Admiralty No. 26366, and thereafter and until on or about December 26, 1956, the Trojan (ex Jeanny) was owned by petitioner and berthed as a dead ship in the Suisun Bay Reserve Fleet of the United States Maritime Administration.

V.

That on December 26, 1956, pursuant to a certain contract of sale dated as of December 21, 1956, petitioner sold and delivered the Steam Tanker Trojan (ex Jeanny) to Rotary Tankers Corporation, a Delaware Corporation, which has since changed its name and is now known as Sheffield Tankers Corporation and will hereinafter be so referred to. That at all times since said last mentioned date, Sheffield Tankers Corporation has been, and on January 29, 1957, was, and ever since has been and is now the owner of said Steam Tanker Trojan (ex Jeanny).

VI.

That on or about January 29, 1957, said Albert N. Player, deceased, was an employee of Todd Shipyards, a corporation, and working aboard said ship while the same was, pursuant to a contract of

repair, moored afloat in navigable waters in the City of Alameda, County of Alameda, State of California, adjacent to a pier operated by Todd Shipyard, a corporation.

VII.

That at said time and place, while said Albert N. Player, deceased, was working aboard said vessel, an explosion or explosions occurred aboard the vessel and said explosion or explosions were followed by fire.

VIII.

That claimant is informed and believes and upon such information and belief alleges that said explosion or explosions were directly and proximately caused by the joint and concurrent negligence, carelessness and fault on the part of petitioner, United States of America, its agents, servants, and employees, and of Sheffield Tankers Corporation, its agents, servants, and employees, in the following particulars, to wit:

(1) Negligent operation of said vessel, its appurtenances, equipment, fuel tanks, fuel oil, cargo holds, and of the associated equipment appurtenant thereto;

(2) Negligent and careless procedure on the part of petitioner, its agents, servants, and employees, in the manner of preparing said vessel, its fuel tanks and contents, and its associated equipment appurtenant thereto, for its removal from its status as a dead ship in the Suisun Bay Reserve

Fleet of the United States Maritime Administration, to its aforesaid reactivation operations;

(3) Negligent failure on the part of both petitioner and Sheffield to ascertain and determine the quality and chemical characteristics of the fuel oil in the bunker tanks of said vessel and/or the "flash point" of said fuel oil, at any time after April 22, 1955, and prior to the heating up of said fuel oil and the lighting off of the boilers of said vessel on said 29th day of January, 1957;

(4) Negligent and careless procedure in the heating up of the vessel's fuel oil, and in the lighting off of the boilers of said vessel;

(5) Failure on the part of both petitioner and Sheffield to provide claimant with a safe and seaworthy vessel in which to perform his work, in violation of the General Maritime Laws in said connection;

(6) Failure on the part of both petitioner and Sheffield to warn said Albert N. Player, deceased, of the existing and pre-existing dangerous and defective condition of said vessel, or of its fuel oil, fuel tanks, cargo holds, boilers, and of the associated equipment appurtenant thereto, which said dangerous and defective condition petitioner and Sheffield well knew or had reason to know, or by the exercise of ordinary care and prudence should have known or had knowledge;

(7) Failure on the part of petitioner and/or Sheffield to use due care or any care to remedy

or take precautions against said dangerous and defective conditions of heating up said fuel oil and of lighting off the boilers of said vessel;

(8) Failure of petitioner and Sheffield to maintain said vessel in a safe and seaworthy condition;

(9) Other negligent acts on the part of petitioner and Sheffield, and of their respective agents, servants and employees, with respect to said vessel, its fuel tanks, fuel oil, boilers, and of the associated equipment appurtenant thereto, not with certainty known to claimant at the time of filing of this claim, but which negligent acts are within the knowledge of petitioner and Sheffield.

IX.

That as a direct and proximate result of said explosion or explosions and fire and the other negligent acts as hereinbefore alleged said Albert N. Player, deceased, sustained injuries from which he died on the 29th day of January, 1957.

X.

That as a direct and proximate result of the joint and concurrent negligence and carelessness of petitioner and Sheffield as hereinabove alleged claimant has been deprived of the support, love, affection, devotion, companionship, and care of a loving and devoted husband and has been generally damaged thereby in the sum of \$150,000.00.

XI.

That by reason of the carelessness and negligence of said petitioner and Sheffield as hereinabove alleged claimant was required to and did expend monies for the burial of said Albert N. Player, deceased, the exact amount of which is unknown at this time, and for which claimant prays leave to amend this claim to insert the sum herein when they shall become known.

Wherefore, claimant, Ethel M. Player, prays that her said claim be allowed against said petitioner, United States of America in said sum and amount of \$150,000.00; and that Claimant have and be awarded judgment against said petitioner, without diminution or limitation, in said sum; and that claimant be awarded, in addition thereto, all of her costs and necessary expenses which she has heretofore or which she may hereafter incur in connection with this proceeding; and for such other further relief as to this Honorable Court may appear just and equitable in the premises, and for general relief.

Dated: July 15, 1958.

/s/ PHILIP J. DOYLE,

/s/ WILBUR C. COLE, JR.,

Proctors for Said Claimant.

Duly verified.

[Endorsed]: Filed July 16, 1958.

[Title of District Court and Cause.]

ANSWER AND EXCEPTIONS OF CLAIMANT, ETHEL M. PLAYER, TO PETITION OF UNITED STATES OF AMERICA FOR EXONERATION FROM OR LIMITATION OF LIABILITY

Comes now, Ethel M. Player, the surviving spouse and sole heir at law of Albert N. Player, deceased, and makes and files herein her answer to the petition of United States of America on file herein and in said connection denies, admits and alleges as follows:

I.

Admits the allegations contained in Paragraphs I, II, III, IV, V, IX, X, XI, XII, XIII, XIV, XV, and XVII of said Petition.

II.

Answering paragraph VI of said petition, this claimant denies each and every, all and singular, generally and specifically, conjunctively and disjunctively, the allegations thereof; and in this connection claimant affirmatively alleges and avers that the explosion or explosions and fire aboard the Trojan January 29, 1957, and the resulting loss, damage and death to Albert N. Player, deceased, were solely and proximately caused by the joint and concurring negligence and fault of petitioner, United States of America, and Sheffield Tankers Corporation, as more particularly set forth in the verified claim of this claimant, served and filed

herein concurrently herewith, and claimant here refers to his said verified claim, and by said reference realleges all of the allegations in said verified claim contained, incorporates the same in and makes the same a part of this, claimant's answer to said petition, with the same force and legal effect as though said verified claim were herein set forth and repeated in full.

III.

Answering the allegations contained in paragraphs VII and VIII of said petition, claimant does not have sufficient information or belief to enable him to answer said paragraphs, and basing her answer thereto on her said lack of information or belief, denies each and every, all and singular, generally and specifically, conjunctively and disjunctively, said allegations; with the exception, however, that this claimant admits and alleges that petitioner, United States of America, at the time of and/or immediately after the said explosion and fire in the Trojan on January 29, 1957, had no interest whatsoever, either as owner or otherwise, in said Trojan or in any of her freight or consumable stores; and, in this connection, claimant further admits and alleges, that on January 29, 1957, said vessel Trojan was owned solely by and was in the possession and control of Sheffield Tankers Corporation. Further answering said paragraphs, claimant is informed and believes and therefore alleges that the value of said vessel Trojan on January 29, 1957, after said explosion or explosions

and fire, was the sum of approximately and not less than \$3,500,000.00.

IV.

Answering the allegations contained in paragraph XVI of said petition, this claimant alleges and avers that said petition of United States of America affirmatively shows on its face that petitioner was neither the owner of, nor the owner of any interest whatsoever in said steam tanker Trojan on January 29, 1957, at the time of said explosion or explosions and fire, and that in consequence petitioner has not brought itself within the provisions of the Act of March 3, 1851, entitled: "An Act to Limit the Liability of Shipowners and for other Purposes," as said Act has been since amended, supplemented, and/or implemented by the Rules of Practice in Admiralty and/or Maritime Cases of the Supreme Court, and/or the Rules of Practice of this Honorable Court governing proceedings in Admiralty.

V.

Answering the allegations and unsupported assertions contained in paragraph XVIII of said petition, claimant denies the truth of the allegations set forth in said petition, excepting only as hereinbefore admitted to be true, and claimant specifically denies that said allegations of said petition bring the same within the admiralty and/or maritime jurisdiction of the United States and/or of this Honorable Court; and, in this connection,

claimant alleges that the said allegations of said petition affirmatively show that this Honorable Court has no jurisdiction to entertain, hear, or to determine said petition for exoneration from or limitation of liability of petitioner, United States of America, with respect to said explosion or explosions and fire on January 29, 1957, upon and in said steam tanker Trojan; and this claimant hereby challenges said jurisdiction.

VI.

Further answering said petition, Claimant excepts thereto, and as and for his grounds of exception specifies:

1. That said petition fails to state facts sufficient to constitute any legal basis for said petition for exoneration from or limitation of liability, as said rights are found, defined and provided in the Act of March 3, 1851, entitled "An Act to Limit the Liability of Shipowners and for Other Purposes," 46 U. S. C. 183-189, as thereafter amended, supplemented or implemented by the Rules of Practice in Admiralty and Maritime Cases of the Supreme Court, and the rules of this Honorable Court governing proceedings in admiralty, and said petition affirmatively shows on its face that it is wholly insufficient.

2. That said petition shows on its face that this Honorable Court has no jurisdiction to entertain, hear, or to determine said petition, other than to dismiss the same for lack of jurisdiction.

Wherefore, having fully answered said petition, claimant, prays:

1. That said verified claim of this claimant, Ethel M. Player, concurrently served and filed herein, for the sum of \$150,000.00, be allowed in full against petitioner, United States of America; and
2. That said petition of United States of America for exoneration from or limitation of liability be dismissed without leave to amend, for lack of jurisdiction of this Honorable Court to entertain, hear or determine the same; and
3. For all costs and necessary disbursements heretofore or hereinafter necessarily incurred by said claimant herein; and
4. For such other and further relief as to the court may appear just and equitable in the premises.

/s/ PHILIP J. DOYLE,

/s/ WILBUR C. COLE, JR.,

Proctors for Claimant Ethel
M. Player.

Duly verified.

[Endorsed]: Filed July 16, 1958.

[Title of District Court and Cause.]

VERIFIED CLAIM OF EMMA E. GREEN, AS
ADMINISTRATRIX OF THE ESTATE OF
FRANK R. SOUZA, DECEASED

Comes Now, Emma E. Greene, as Administratrix of the Estate of Frank R. Souza, deceased, and herewith presents and files her verified claim and in these regards and premises sets forth the following:

I.

That she is the duly appointed Administratrix of the Estate of Frank R. Souza, deceased, by virtue of the orders and authority of the Superior Court in and for the City and County of San Francisco, State of California, and acting in said capacity.

II.

That Frank R. Souza, deceased, prior to his death, was a seaman, to wit: a third assistant engineer, in the service of the vessel the "S.S. Jeanny," now the "S.S. Trojan," which said vessel was allegedly purchased from an official agency of the United States of America by Sheffield Tankers Corporaiton, a corporation, or its predecessors in interest. Prior to said sale and purchase, the aforesaid vessel was in the control of the United States, its agents, servants and/or employees, and was inactive until approximately December, 1956, when said sale and purchase were effectuated. In this regard claimant is informed, believes and therefore alleges the United States was concurrently

with other named defendants, to wit: Sheffield Tankers Corporation and Todd Shipyard Corporation, negligent and careless, in that said vessel was at the time and place of transfer to the purchasers thereof in an unseaworthy condition.

III.

Said deceased was in the course and scope of his employment when the said vessel was undergoing repairs at the Todd Shipyards, owned, controlled and operated by the Todd Shipyards Corporation, a corporation, in Alameda, Alameda County, State of California, on or about the 29th day of January, 1957.

IV.

At the aforesaid date and place and at or about the hours of 3:00 p.m., and while said vessel was berthed at or about Pier 5, Todd Shipyards, aforesaid, the after section, aft housing, machinery sections, aft deep tanks and engine room were caused to and did explode violently thus proximately causing the said Frank R. Souza, deceased, to sustain multiple and devastating injuries and proximately and consequently killed him.

V.

The items of damage claimed herein are as follows:

- (1) The sum of One Thousand, Three Hundred and Twelve Dollars and Thirty Cents (\$1,312.30) as and for the expense of the last rites and burial of said Frank R. Souza, deceased.

(2) The sum of Two Hundred Thousand Dollars (\$200,000) as and for general damages sustained by Enriqueta Souza, widow of said Frank R. Souza, deceased, who has been deprived of the services, earnings, support and companionship of said deceased.

Respectfully submitted,

/s/ EMMA E. GREENE,

As Administratrix of the Estate of Frank R. Souza, deceased.

Duly verified.

[Endorsed]: Filed July 16, 1958.

[Title of District Court and Cause.]

CLAIM OF SHEFFIELD TANKERS
CORPORATION

Sheffield Tankers Corporation makes this claim against the United States of America:

I.

Sheffield Tankers Corporation is a Delaware Corporation doing business as a ship owner.

II.

On April 22, 1955, United States of America took title to the steam tanker Trojan (ex Jeanny) under a Decree of Forfeiture rendered on that date by the United States District Court of the North-

ern District of California in the case of United States of America versus Tanker Jeanny, etc., Admiralty number 26366.

III.

On December 26, 1956, pursuant to a contract of sale dated as of December 21, 1956, United States of America sold and delivered the Steam Tanker Trojan (ex Jeanny) to Sheffield Tankers Corporation.

IV.

On January 29, 1957, while the Steam Tanker Trojan (ex Jeanny) was owned and operated by Sheffield Tankers Corporation and moored in the shipyard of Todd Shipyards Corporation of Alameda, California, an explosion or explosions and fire occurred on the Trojan.

V.

By reason of the aforesaid explosions or fire the Trojan was damaged. Members of the crew and employees of Todd and others were killed and injured and sustained loss of, or damage to property. The vessel was detained at great loss of profits and earnings to Sheffield. Extensive repairs were occasioned by the casualty. Much of the repair and reactivation already completed at the time of the casualty had to be redone.

VI.

The explosions and fire aboard the Trojan on January 29, 1957, and the resulting damage were

solely and proximately caused by the negligence and fault of the Todd Shipyards Corporation and/or United States of America, and their servants, agents and employees and others not now known to Sheffield Tankers Corporation and were not caused or contributed to by any act, omission, fault, negligence or breach of duty of Sheffield Tankers Corporation.

VII.

On April 12, 1957, Todd Shipyards Corporation filed an action in the United States District Court for the Northern District of California entitled Todd Shipyards Corporation versus The Steam Tanker Trojan (ex the Jeanny), her engines, machinery, boilers, boats, tackle, apparel, etc., and Sheffield Tankers Corporation, a corporation, seeking recovery of repair claims allegedly due in the sum of \$1,400,000.00.

VIII.

In addition, by reason of the foregoing the Trojan and Sheffield have been sued by employees of Todd and others for death and personal injuries in an aggregate amount in excess of \$1,400,000.00 and additional suits of the same, other and various natures will be commenced in amounts presently unascertained, as to which Sheffield will seek leave to amend its claim. Sheffield will be damaged to the extent it may be required to pay on account of said personal injuries and deaths and for the costs and expenses required in the defense of said claims. By reason of the premises any such damages, costs and expenses sustained or incurred by Sheffield, should

be borne by and are claimed against United States of America.

IX.

The explosion and fire aboard the Trojan on January 29, 1957, has resulted in many deaths and personal injuries and much property damage and demurrage and it may be and is expected that other claims will be made in suits filed against Sheffield Tankers Corporation as a result of the explosion and fire, in addition to the claim specifically referred to herein.

X.

If Sheffield Tankers Corporation is or becomes liable to anyone by reason of any matters arising out of the explosion and fire on board the Trojan on January 29, 1957, such liability was caused by the fault and negligence of the United States of America, its servants, agents and employees, among others, and United States of America is liable to Sheffield Tankers Corporation for any and all such liability by way of indemnity and contribution.

XI.

The amount of the claim of Sheffield Tankers Corporation against United States of America for indemnity and contribution is unknown at present and cannot be ascertained until full disposition of the pending and related actions and any further claims, libels, suits or actions that may be presented or filed against Sheffield Tankers Corporation.

XII.

These allegations are all true.

Wherefore, Sheffield Tankers Corporation asks that the Court decree payment by the United States of America to Sheffield Tankers Corporation of all its damages including any sum or sums that may be allowed or adjusted against Sheffield Tankers Corporation and any moneys this claimant may be called upon to pay to any other persons or parties for loss, damage, demurrage, injuries or deaths arising from the explosion and fire aboard the Trojan on January 29, 1957, together with interest thereon and costs and that claimant may have such other and further relief as may be just in the premises.

LILLICK, GEARY, WHEAT,
ADAMS & CHARLES,

/s/ GILBERT C. WHEAT,

/s/ EDWIN L. GEARHARDT,

/s/ MARK SCOTT HAMILTON

Proctors for Sheffield
Tankers Corporation.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed July 17, 1958.

[Title of District Court and Cause.]

ANSWER OF SHEFFIELD
TANKERS CORPORATION

Sheffield Tankers Corporation, answers the Petition of the United States of America for Exoneration from or Limitation of Liability as follows:

I.

Admits the allegations of Article I.

II.

Admits the allegations of Article II.

III.

Admits the allegations of Article III.

IV.

Admits the allegations of Article IV.

V.

Admits the allegations of Article V.

VI.

Denies the allegations of Article VI, except is informed and accordingly believes and therefore admits that the explosion and fire aboard the Trojan on January 29, 1957, and the resulting loss, damage and injury were proximately contributed to by the negligence and fault of Todd Shipyards Corporation, their servants, agents and employees.

VII.

Denies the allegations of Article VII, except admits that at the time of the explosion and fire aboard the Trojan on January 29, 1957, United States of America did not have the custody or control of the vessel and no servants, agents or employees of it were known to respondent to have been on or about the vessel or participating in any activities with reference to her repairs.

VIII.

Denies the allegations of Article VIII.

IX.

Admits the allegations of Article IX.

X.

Admits the allegations of Article X.

XI.

Admits the allegations of Article XI.

XII.

Admits the allegations of Article XII.

XIII.

Admits the allegations of Article XIII.

XIV.

Admits the allegations of Article XIV.

XV.

Has no information to answer the allegations contained in Article XV and on that ground denies the same.

XVI.

Denies the allegations of Article XVI and further denies that United States of America is entitled to have its liability limited.

XVII.

The allegations contained in Article XVII raise questions of law only which do not require answer.

XVIII.

Denies the allegations of Article XVIII, except admits the Court has jurisdiction of the matter.

Wherefore, Sheffield Tankers Corporation ask that the Petition of the United States of America be denied and a decree entered for the allowance of the claim of Sheffield Tankers Corporation on file herein and for such other relief as may be just in the premises.

LILLICK, GEARY, WHEAT,
ADAMS & CHARLES,

/s/ GILBERT C. WHEAT,

/s/ EDWIN L. GERHARDT,

/s/ MARK SCOTT HAMILTON,
Proctors for Sheffield
Tankers Corporation.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed July 17, 1958.

[Title of District Court and Cause.]

CLAIM FOR DAMAGES

Comes now Stanley B. Murphy and makes claim and proof of claim herein against United States of America, as owner of the Tanker Trojan (ex Jeanny), and for First cause of claim alleges:

I.

That Petitioner is and at all times mentioned herein was a sovereign nation.

II.

That Petitioner herein is now and was at all times herein mentioned the owner of the Tanker Trojan (ex Jeanny).

III.

That on or about the 29th day of January, 1957, Claimant was in the employ of the Westinghouse Electric Corporation, and that on said date Claimant was engaged in work on board the Tanker Trojan for and under the direction of Todd Shipyards Corporation and Petitioner United States of America, as Owner of the Tanker Trojan; that said Claimant was performing said work pursuant to a contract for repairs to said vessel by the Todd Shipyards Corporation and Petitioner, and each of them; that then and there and by reason thereof Claimant was a business visitor of the Petitioner and said vessel, and that Claimant was then and

there actually working aboard said ship and making repairs thereto and was rendering services necessary to the ship's business of carrying cargo, and in doing so was doing ship's work and work usually performed by a seaman in the service of said vessel.

IV.

That while Claimant was working aboard said Tanker Trojan, as aforesaid, and while under and pursuant to the directions and instruction of said vessel's operating Petitioner an explosion occurred aboard the vessel with great force, inflicting upon Claimant serious personal injuries.

V.

That said explosion occurred as a proximate result of the negligence of Petitioner, its agents, employees and the owners, masters and crew of said vessel in, among other things, that the boilers in the engine room of said vessel were fired up and operated without due precaution and by reason of other acts of negligence by Petitioner and Petitioner's personnel, the nature of which Claimant has not yet ascertained, and Petitioner prays leave to specify the nature of said negligent acts when specifically ascertained; that Petitioner knew, or in the exercise of reasonable care should have known of the dangerous and defective condition of said vessel, its appurtenances, equipment, fuel tanks and all the associated equipment appurtenant thereto, and failed to remedy, take necessary precautions

or warn Claimant, and others, against the same; that by reason thereof Petitioner thereby negligently failed to provide Claimant with a reasonably safe place to work.

VI.

That as a direct and proximate result of Petitioner's negligence, as herein alleged, Claimant received serious and painful injuries to his head, body and limbs; that the full extent of such injuries has not yet been ascertained, but Claimant is informed and believes that the injuries are permanent in nature; that as a direct result of the foregoing injuries, so caused as aforesaid, Claimant has been damaged in the sum of Thirty-five Thousand Dollars (\$35,000.00).

VII.

That as a proximate result of Petitioner's negligence, as aforesaid, and the resultant alleged injuries Claimant has incurred and may in the future incur expenses for hospitalization, services of physicians and surgeons, medicines and kindred items; that in addition Claimant has incurred loss of wages by reason of said injuries in an amount not yet ascertained, and therefore prays leave to amend this Claim to insert the full amount of said medical expenses and wage loss when ascertained.

VIII.

That the nature, grounds and items of this claim and the allegations of fact upon which Claimant

relies are set forth herein, and no credits have been given or payments made; that the allegations herein are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, Claimant prays judgment as herein-after prayed.

For a Second cause of claim Claimant alleges:

I.

Claimant hereby incorporates and makes a part of this cause of claim all of the allegations contained in the First cause of claim contained herein, as fully and completely as if said allegations were set out herein in the words and figures therein contained.

II.

Upon information and belief said Claimant alleges that said explosion occurred by reason, among other things, of the defective, unsafe and unseaworthy condition of said vessel, Tanker Trojan; that the injuries of Claimant were directly and proximately caused by and resulted from Petitioner's failure to provide Claimant with a safe and seaworthy vessel.

Wherefore, Claimant presents his claim herein in the sum of Thirty-five Thousand Dollars (\$35,000.00), and interest, and for reasonable medical expenses and loss of wages when ascertained, and

for such other and proper relief as is meet in the premises.

HAGAR, CROSBY & ROSSON,

/s/ DAVID C. RUST,

Proctors for Claimant,

Stanley B. Murphy.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 18, 1958.

[Title of District Court and Cause.]

ANSWER OF STANLEY B. MURPHY

Comes now Claimant and in answer to the Petition on file herein by United States of America, as Owner of the Tanker Trojan, for exoneration from or Limitation of Liability, admits, denies and alleges:

I.

Answering paragraph IV of said Petition the Claimant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the averments therein and upon this ground denies the allegations therein contained.

II.

Answering paragraph V of said Petition the Claimant denies the allegations that the repairs to

said vessel were being done on behalf of Sheffield Tankers Corporation alone, but alleges that said repairs were also being done on behalf of Petitioner.

III.

Answering paragraphs VI and VII of said Petition the Claimant denies generally and specifically, each and every, both singularly and generally, the allegations contained in said paragraphs VI and VII of said Petition.

IV.

Answering paragraph VIII of said Petition, the claimant denies generally and specifically, each and every, both singularly and generally, the allegations therein contained, and further specifically denies on the grounds that he is without knowledge or information sufficient to form a belief as to the truth of the averment therein, the value of said vessel and interest of Petitioner therein, and requires strict proof thereof.

V.

Answering paragraph XVI of said Petition, the Claimant denies the allegations therein, and alleges that Petitioner and the Tanker Trojan are liable for all loss, damage and injury resulting from the aforesaid explosion, and Claimant further denies that Petitioner is entitled to statutory limitations of liability under Title 46, U.S.C., Sections 181-186, or under any other applicable sections of the Laws and Acts of the Congress of the United States.

Wherefore, Claimant prays that Petitioner's Petition for Exoneration from or Limitation of Liability be denied.

HAGAR, CROSBY & ROSSON,

/s/ DAVID C. RUST,

Proctors for Claimant,
Stanley B. Murphy.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 18, 1958.

[Title of District Court and Cause.]

DECREE OF DEFAULT

It Appearing to this Court that pursuant to its order entered in the above-entitled proceedings on May 2, 1958, a Monition was duly issued herein out of and under the seal of this Court, directed to the United States Marshal of this District and commanding him to cite all persons, firms, corporations, and parties claiming damages from or against petitioner or its agents, to file their claims under oath with the Clerk of this Court and serve on or mail to Petitioner's proctors, Lloyd H. Burke, Esq., United States Attorney; Keith R. Ferguson, Esq., Special Assistant to the Attorney General, and Graydon S. Staring, Esq., Attorney, Admiralty and Shipping Section, Department of

Justice, Rm. 447-A, Post Office Building, Seventh and Mission Streets, San Francisco 1, California, a copy thereof on or before the 17th day of June, 1958, or be defaulted, and to cite any claimants desiring to contest Petitioner's right to exoneration from or limitation of liability, to file an answer to the petition and serve a copy thereof on proctors for Petitioner; and

It Further Appearing to the satisfaction of the Court that the Marshal has in all respects complied with the Restraining Order of this Court and Order for Issuance of Monition, dated May 2, 1958, and with the Monition, and that he has cited and admonished in the manner prescribed therein all persons, firms, corporations and parties; and

It Further Appearing that the United States Marshal did cause public notice of the monition to be given in accordance with and in the form prescribed by this Court, and by United States Supreme Court Admiralty Rule 51, by publication in The Recorder, a daily newspaper of general circulation printed and published in the City and County of San Francisco, State of California, as more fully appears from the Marshal's return on file herein; and that copies of Supreme Court Admiralty Rule No. 52, copies of the Notice of Petition for Exoneration from or Limitation of Liability, copies of the Restraining Order and Order for Issuance of Monition were on May 8, 1958, prior to the day of second publication of Notice,

mailed to the persons set forth in the Affidavit of Mailing on file herein; and

It Further Appearing that all matters and things required to be done pursuant to the Restraining Order and Order Directing Issuance of Monition, dated May 2, 1958, and the Monition, have been done and performed; and

It Further Appearing that on the return date of the Monition, June 17, 1958, proclamation was duly made in open court, and that upon the making of said proclamation, at the request of Petitioner, this court ordered that all persons, firms, corporations, and parties claiming damages from or against Petitioner, or its agents, have to and including the 16th day of July, 1958, within which to file their claims and answers to the petition under oath with the Clerk of this Court, and serve on or mail to proctors for Petitioner, Lloyd H. Burke, Esq., United States Attorney; Keith R. Ferguson, Esq., Special Assistant to the Attorney General, and Graydon S. Staring, Esq., Attorney, Admiralty and Shipping Section, Department of Justice, Room 447-A, Post Office Building, Seventh and Mission Streets, San Francisco 1, California, a copy thereof; and

It Further Appearing that no claim or claims have been filed in these proceedings by any persons, firms or corporations pursuant to the Monition and Notice thereof, or any answers to the petition served or filed herein; or extensions of time

granted to file claims or answers herein, except as is shown by the records and files of the Clerk of this Court in this cause, and by the list of claimants who have filed claims and those who have obtained an extension of time to file claims, hereto attached and made a part hereof; and the Court being fully advised in the premises,

Now, Therefore, upon motion of proctors for Petitioner,

It Is Hereby Ordered, Adjudged and Decreed that the default be and the same is hereby entered of all persons, firms, corporations and parties except those who have heretofore on or before the date of this decree filed claims or claims and answers to the petition, or obtained an order extending time to file claims or answers in these proceedings, as shown by the records and files of the Clerk of this Court in this cause, and by the list of claimants and those who have obtained extension of time to file claims hereto attached and made a part hereof, having any interest in or in any way claiming any interest in and having claims for damages from or against Petitioner for any loss, damage, injury, death or destruction of any kind, resulting from the explosion or explosions and fire aboard the steam tanker Trojan, on January 29, 1957, in the shipyard of Todd Shipyards Corporation at Alameda, California, who have failed to file their claims herein or obtain such order extending time on or before the date of this decree; and

It Is Further Ordered, Adjudged and Decreed that no liability exists upon the part of Petitioner herein to any persons, firms, corporations, and parties for any damages from or against Petitioner for any loss, damage, injury, death or destruction of any kind, resulting from the explosion or explosions and fire aboard the steam tanker Trojan, on January 29, 1957, in the shipyard of Todd Shipyards Corporation at Alameda, California, who have not filed claim for any such loss, damage, destruction of any kind, or injury, including death and personal injuries, and who, intending to contest the right to exoneration or limitation, have not answered or pleaded to the petition on or before the date of this decree, and who are not shown by the files of the Clerk of this Court or the list hereto attached as having filed a claim or obtained an order extending time within which to file a claim, and all such persons, firms, corporations and parties, except those referred to as having filed claim or obtained an order extending time to file the same, are hereby barred from any participation in this proceeding or in any fund arising out of this proceeding; and

It Is Further Ordered, Adjudged and Decreed that all persons, firms, corporations and parties who are herein defaulted, be and they, and each of them, are hereby perpetually restrained and enjoined from commencing or prosecuting any action or suit for any loss, damage, injury, death, or destruction of any kind, whether of or to life or per-

sons or property, resulting from the explosion or explosions and fire aboard the steam tanker Trojan, on January 29, 1957, in the shipyard of Todd Shipyards Corporation at Alameda, California, against the Petitioner in any Court; and

It Is Further Ordered, Adjudged and Decreed that all issues raised by the petition herein and answers thereto now on file, or any answer or answers which may hereafter be filed within the time granted by this Court, shall stand for trial before this Court according to the rules and practice thereof; and

It Is Further Ordered, Adjudged and Decreed that the proof of all claims so filed as aforesaid be and the same is hereby suspended until the trial and determination of this action.

Dated: July 21st, 1958.

/s/ GEORGE B. HARRIS,
United States District Judge.

Extend in Admiralty.

Docketed on July 22, 1958.

United States of America

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Claims Filed

Date Filed	Name of Claimant	Proctor	Amount Claimed
6/12/58	Todd Shipyards Corporation	McCutchens, Thomas, Matthew, Griffiths & Greene; Crowell, Rouse & Varian.....	\$ 8,100,000.00
6/16/58	Marion Gainey (Robert P. Gainey, dec'd)	Hoberg & Finger; Joseph E. Tinney & Ellis Filene	100,000.00
6/16/58	Charles Cecil McNaughton	Barrett, Lucey & Harkleroad, Dudley Harkleroad	50,000.00
6/16/58	Patricia Gauthier, Rosemary Gauthier, Mae Wilda Gauthier, Herbert J. Gauthier, Jr., Jean Evelyn Gauthier, Albert Jeffery Gauthier, Victor Anthony Gauthier, Rene Michelle Gauthier, minors, by and through Olive Bernice Gauthier, guardian ad litem of each, and Olive Bernice Gauthier, individually, and Barbara Anna Langley and Helen Louise Thompson (Herbert J. Gauthier, Sr., dec'd)	James C. Purcell, Edwin V. McKenzie, Michael Riordan, James C. Purcell, D. Ralph Cesari.....	550,000.00
6/17/58	George Hinkley	Kenneth W. Larson.....	50,000.00
6/17/58	Travelers Insurance Company	Jay T. Cooper; Dorri, Copper & Hays.....	182,851.34

Todd Shipyards Corp. vs.

Date Filed	Name of Claimant	Proctor	Amount Claimed
7/11/58	Melvin Gladstone, Admr. of Estate of Max J. Gladstone, dec'd.	McMurray, Brotsky, Walker, Bancroft, & Tepper; Allan Brotsky	\$ 100,575.00
7/15/58	James M. Archie	Crozier C. Culp, Rodney G. Commons	150,000.00
7/15/58	Frank Tucker	Stanley M. Fernwood	50,000.00
7/15/58	Kee Welch	Stanley M. Fernwood	50,000.00
7/15/58	Ulrich Kale	Stanley M. Fernwood	50,000.00
7/15/58	Abram Bittle	Stanley M. Fernwood	50,000.00
7/15/58	Robert Wilcox	Stanley M. Fernwood	50,000.00
7/15/58	Clovis Campbell	Stanley M. Fernwood	50,000.00
7/16/58	Eugene Fitch	Smith & Parrish, Joseph E. Smith	50,000.00
7/16/58	Wilfred J. Molden	Smith & Parrish, Joseph E. Smith	25,000.00
7/16/58	Kurt C. Kahlert	Smith & Parrish, Joseph E. Smith	100,000.00
7/16/58	Theodore Moore	Smith & Parrish, Joseph E. Smith	25,000.00
7/16/58	Milton Fairfax Johnson	Smith & Parrish, Joseph E. Smith	25,000.00
7/16/58	Henry C. Frison	Edises, Treuhaft, Grossman & Grogan; Robert E. Treuhaft	25,000.00
7/16/58	Rubin May, Jr.	Edises, Treuhaft, Grossman & Grogan; Robert E. Treuhaft	30,000.00
			150,000.00

7/16/58	Samuel Roberts	George L. Cooke, Andrew Bodisco.....	\$ 25,000.00
7/16/58	Theodore Carpenter	George L. Cooke, Andrew Bodisco.....	25,000.00
7/16/58	Charles Ballew	George L. Cooke, Andrew Bodisco.....	75,000.00
7/16/58	Weldon Cochran	George L. Cooke, Andrew Bodisco.....	75,000.00
7/16/58	Allie Evans	George L. Cooke, Andrew Bodisco.....	100,000.00
7/16/58	Marion E. Oldham	Kaiser & O'Neill, Jeremiah F. O'Neill, Jr.....	75,000.00
7/16/58	Ethel M. Player (Albert N. Player, dec'd)	Philip J. Doyle.....	150,000.00
7/16/58	Nellie Stanovich, individually, and as Spec. Admrx. of Estate of Pete Stanovich, dec'd	Guidotti & Mellana, Aldo P. Guidotti.....	101,367.58
7/16/58	Bertha Mae McIntyre as Spec. Admrx. of Estate of Roosevelt McIntyre	Darwin & Peckham, Jay A. Darwin.....	400,000.00
7/16/58	John E. Polk	Darwin & Peckham, Jay A. Darwin.....	300,000.00
7/16/58	Oscar F. Asplin, Jr.	Darwin & Peckham, Jay A. Darwin.....	100,000.00
7/16/58	John H. Allison	Darwin & Peckham, Jay A. Darwin.....	70,000.00
7/16/58	Rudy F. Bohme	Darwin & Peckham, Jay A. Darwin.....	70,000.00
7/16/58	Philip J. Brissell	Darwin & Peckham, Jay A. Darwin.....	100,000.00

Date Filed	Name of Claimant	Proctor	Amount Claimed
7/16/58	John J. Casey	Darwin & Peckham, Jay A. Darwin.....	\$ 70,000.00
7/16 58	Eddie Cobb	Darwin & Peckham, Jay A. Darwin.....	70,000.00
7/16/58	Sievert C. Hansen	Darwin & Peckham, Jay A. Darwin.....	70,000.00
7/16/58	Willie D. Howard	Darwin & Peckham, Jay A. Darwin.....	70,000.00
7/16/58	Carl K. Larsen	Darwin & Peckham, Jay A. Darwin.....	100,000.00
7/16/58	James L. Lewis	Darwin & Peckham, Jay A. Darwin.....	40,000.00
7/16/58	James C. Prater	Darwin & Peckham, Jay A. Darwin.....	100,000.00
7/16/58	Billie B. Rawson	Darwin & Peckham, Jay A. Darwin.....	200,000.00
7/16/58	Alfred E. Stief	Darwin & Peckham, Jay A. Darwin.....	70,000.00
7/16/58	Willie Wise	Darwin & Peckham, Jay A. Darwin.....	200,000.00
7/16/58	Moses Rogers	Melvin M. Belli & Herbert Resner.....	100,000.00
7/16/58	Thomas Chapman	Melvin M. Belli & Herbert Resner.....	50,000.00
7/16/58	John Hines	Melvin M. Belli & Herbert Resner.....	35,000.00
7/16/58	James Coleman	Melvin M. Belli & Herbert Resner.....	50,000.00
7/16/58	R. H. Hawthorne	Melvin M. Belli & Herbert Resner.....	35,000.00

United States of America

7/16/58	Lee Kilpatrick	Melvin M. Belli & Herbert Resner.....	75,000.00
7/16/58	Chester R. Smith	Melvin M. Belli & Herbert Resner.....	100,000.00
7/16/58	Elmira Terry McIntyre (Roosevelt McIntyre, dec'd)	Melvin M. Belli & Herbert Resner.....	201,312.30
7/16/58	Emma E. Greene Admx. of Estate of Frank R. Souza, dec'd.	Ashe & Pinney.....	
7/17/58	Sheffield Tankers Corporation	Lillick, Geary, Wheat, Adams & Charles; Gilbert C. Wheat, Edwin L. Gerhart, Mark Scott Hamilton... Hagar, Crosby & Rosson; David C. Rust.....	2,800,000.00 35,000.00
7/18/58	Stanley B. Murphy		
7/16/58	Clark M. Truex	Claimants Who Were Granted Extensions of Time Within Which to File Claims Philip Steiner	

[Endorsed]: Filed July 21, 1958.

[Title of District Court and Cause.]

CLAIM OF CLARK M. TRUEX PURSUANT
TO ADMIRALTY RULE 52, UNITED
STATES SUPREME COURT

To the Honorable, the Judges of the District Court
of the United States for the Northern District
of California, Southern Division:

The claim of Clark M. Truex respectfully shows:

I.

Claimant is a resident of Alameda County, State
of California.

II.

Claimant is a shipyard worker who was on January 29, 1957, in the employ of Todd Shipyards, Inc., aboard the Tanker, Trojan (ex Jenny), in Alameda County, California. At said time and place the tanker Trojan (ex Jenny) was docked at a wharf or pier in said shipyard, and afloat on navigable waters of the United States, to wit, San Francisco Bay.

III.

At said time and place a severe explosion occurred aboard said vessel which was caused by the negligence and unseaworthiness of said vessel, her owners and operators, Sheffield Tankers Corporation and the United States of America.

IV.

Claimant Clark M. Truex was seriously injured as a direct and proximate result of the aforesaid

fire and explosion as follows: Certain major dangerous, painful and permanently crippling and disabling injuries to his body, including, among other things, burns of and about the face and hands, and injuries to the face, head, eyes and ears, requiring plastic surgery, loss of eyesight and headaches, injury and major shock to claimant's nervous system, hernia, and other injuries and financial loss not presently ascertained by claimant which may grow out of the aforesaid injuries, and claimant has been and will be in the future deprived and prevented thereby from following his usual occupation as a marine electrician, all to claimant's damage in the sum of fifty thousand dollars (\$50,000.00).

Wherefore, claimant Clark M. Truex hereby asserts his claim and prays judgment and decree against petitioner in the amount of fifty thousand dollars (\$50,000.00), his costs of suit, and such other and further relief as to the Court seems appropriate in the premises.

/s/ PHILIP STEINER,
Proctor for Claimant,
Clark M. Truex.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 23, 1958.

[Title of District Court and Cause.]

CROSS-LIBEL

To the Honorable the Judges of the United States District Court for the Northern District of California, Sitting in Admiralty:

The cross-libel of the United States of America, petitioner, against claimant Todd Shipyards Corporation in a cause of contract and damage, civil and maritime, respectfully shows as follows:

I.

Cross-libelant is and at all times mentioned herein was a sovereign nation.

II.

At all times hereinafter mentioned, cross-respondent Todd Shipyards Corporation, was and now is a corporation organized and existing under the laws of the State of New York, having a principal place of business in the City of Alameda, State of California, within the jurisdiction of this Honorable Court.

III.

The steam tanker Trojan (ex Jeanny) is, and was at all material times, a steel, ocean-going T2 tanker of 10,296 gross tons, registered under the laws of the United States, Official No. 247177.

IV.

On December 20, 1957, Todd Shipyards Corporation, as cross-respondent, filed, in that certain ac-

tion in the United States District Court for the Northern District of California, entitled Todd Shipyards Corporation vs. the Steam Tanker Trojan, Admiralty No. 27506, an impleading petition against the United States of America, alleging that Todd Shipyards Corporation was damaged by the explosion and fire aboard the Trojan, January 29, 1957, in an unspecified amount dependent upon claims made against Todd Shipyards Corporation and claiming the recovery of all such damages from the United States of America, on the basis of alleged acts and failures to act of Petitioner as owner of the Trojan (ex Jeanny). Pursuant to an order of consolidation, dated April 28, 1958, the said action, Admiralty No. 27506, was consolidated with, and under the caption of, that certain action in the United States District Court for the Northern District of California entitled In the Matter of the Petition of Sheffield Tankers Corporation, etc., Admiralty No. 27543.

V.

On April 8, 1958, Todd Shipyards Corporation, as libelant, filed, in that certain action in the United States District Court for the Northern District of California, entitled Todd Shipyards Corporation vs. United States of America, Admiralty No. 27702, a libel against the United States of America, alleging that Todd Shipyards Corporation was damaged by the explosion and fire aboard the Trojan, January 29, 1957, in an amount in excess of \$8,000,-000.00, and claiming the recovery of all such damages from the United States of America, on the

basis of alleged acts and failures to act of Petitioner as owner of the Trojan (ex Jeanny).

VI.

On April 8, 1958, Todd Shipyards Corporation, as plaintiff, filed, in that certain action in the United States District Court for the Northern District of California, entitled Todd Shipyards Corporation vs. United States of America, civil No. 37181, a complaint against the United States of America alleging that Todd Shipyards Corporation was damaged by the explosion and fire aboard the Trojan, January 29, 1957, in an amount in excess of \$8,000,000.00, and claiming the recovery of all such damages from the United States of America, on the basis of alleged acts and failures to act of Petitioner as owner of the Trojan (ex Jeanny).

VII.

On May 2, 1958, cross-libelant United States of America filed, in this present action, its petition for exoneration from or limitation of liability, and numerous claimants, including cross-respondent Todd Shipyards Corporation, have filed their claims therein. The names of such claimants and the nature of their claims are shown by the record in this action.

VIII.

On April 22, 1955, cross-libelant took title to the Steam Tanker Trojan (ex Jeanny) under a certain decree of forfeiture passed on that date by the United States District Court for the Northern Dis-

trict of California, in the case of the United States of America vs. Tanker Jeanny, etc., Admiralty No. 26366, and thereafter and until on or about December 26, 1956, the Trojan was owned by petitioner and, except for preparation of the vessel for lay-up, was berthed as a dead ship in the Suisun Bay Reserve Fleet of the United States Maritime Administration.

IX.

Prior to May 16, 1955, cross-respondent entered into a written contract, designated Contract No. MA-293, with cross-libelant United States of America, which said contract was at all material times and now is in full force and effect, the obligations and liabilities of which contract have been duly assumed by cross-respondent. The terms and conditions of the said contract, a copy of which is in the possession of cross-respondent, and a copy of which will be produced at the trial, are hereby made a part hereof by reference as though fully set forth herein. By the terms of the said contract, cross-respondent agreed to perform from time to time repair, alteration, conversion, reconversion or reconditioning of vessels of the United States under job orders issued by the Maritime Administration.

X.

On May 16, 1955, under the said Contract MA-293, the United States issued to cross-respondent Job Order No. 51. The terms and conditions of the said job order, a copy of which is in the possession of cross-respondent, and a copy of which will be

produced at the trial, are hereby made a part hereof by reference as though fully set forth herein. Cross-respondent accepted the said job order and undertook and became obligated thereunder, and under the terms and conditions of Contract MA-293, to perform certain repairs and maintenance including necessary repairs and maintenance to prepare the Trojan (ex Jeanny) for purposes of lay-up and, for the purpose of performing such repairs and maintenance, to take exclusive custody, control and operation of the said ship.

XI.

On May 20, 1955, under the said Contract MA-293, the United States issued to cross-respondent Job Order No. 51A. The terms and conditions of the said job order, a copy of which is in the possession of cross-respondent and a copy of which will be produced at the trial, are hereby made a part hereof by reference as though fully set forth herein. Cross-respondent accepted the said job order and undertook and became obligated thereunder and under the terms and conditions of Contract MA-293 to perform certain additional repairs and maintenance including specifically the performance of the following:

“Furnish additional labor and materials as necessary to thoroughly clean oil found in main cargo and stripping lines. Thoroughly clean and dispose of oil from No. 9 center cargo tank as a result of stripping to accomplish above work.”

XII.

During the time when cross-respondent was engaged in performing work aboard the Trojan (ex Jeanny) and in furnishing labor, services, materials, equipment, supplies and facilities incident thereto pursuant to and under the terms of the said contract and the said job orders, the vessel and all portions of the vessel, were in the sole and exclusive custody and control of cross-respondent, its servants, agents and employees under the said contract and the said job orders for the purpose of performing necessary repairs and maintenance to prepare the vessel for lay-up purposes.

XIII.

On December 26, 1956, pursuant to a certain contract of sale dated as of December 21, 1956, cross-libelant sold and delivered the Steam Tanker Trojan (ex Jeanny) to Rotary Tankers Corporation, a Delaware corporation, which has since changed its name and is now known as Sheffield Tankers Corporation, and will hereafter be so referred to.

XIV.

On or about January 4, 1957, the Trojan, then named the Jeanny, was moved to Todd Shipyards, Alameda, California, for extensive reactivation repairs on behalf of Sheffield Tankers Corporation, and on January 29, 1957, at approximately 3:10 p.m., while she was moored afloat at a Todd Shipyard pier, undergoing repair, the explosion or explosions occurred within the after portion of the

vessel followed by fire, which resulted in many deaths and personal injuries and much property damage, and which are referred to in the pleadings now on file herein.

XV.

The explosion or explosions and fire aboard the Trojan January 29, 1957, and the resulting loss, damage and injury were not caused or contributed to by any act, omission, fault, negligence or breach of duty of cross-libelant, but were solely and directly and proximately caused by the carelessness and negligence of cross-respondent, its servants, agents and employees, and by their wilful misconduct, failure to exercise good faith, and failure to perform the terms and conditions of the said contract in that cross-respondent failed to perform its work according to the best commercial marine practice and in compliance with the requirements of the American Bureau of Shipping, the United States Coast Guard, and other regulatory bodies, in failing to perform the work as specified above, and in other respects which will be proved at the trial, and by the improper, careless and negligent manner in which cross-respondent, its servants, agents and employees conducted themselves and their activities and misused the facilities aboard the said vessel.

XVI.

If cross-libelant is under any liability by reason of any of the matters alleged in the petition, libel, complaint and claims referred to in Articles IV, V, VI and VII above, or otherwise, such liability

was solely and proximately caused by the fault, negligence and breach of contract of cross-respondent, its servants, agents and employees, as alleged herein; and by reason thereof, any and all such liability should be borne by cross-respondent and cross-respondent is wholly liable to cross-libelant by way of full indemnity over.

XVII.

All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

For a Second and Separate Cause of Action Cross-Libelant Alleges as Follows:

XVIII.

Cross-libelant refers to and incorporates as though fully set forth herein all the allegations of Articles I, II, III, IV, V, VI, VII, VIII, XIII, XIV, XVI and XVII above.

XIX.

The explosion or explosions and fire aboard the Trojan January 29, 1957, and the resulting loss, damage and injury were not caused or contributed to by any act, omission, fault, negligence or breach of duty of cross-libelant but were solely and proximately caused by the carelessness and negligence of cross-respondent, its servants, agents and employees in connection with the performance of the said reactivation repairs on behalf of Sheffield Tankers Corporation, while the vessel was in the

possession, custody and control of cross-respondent, in that cross-respondent performed the said repairs in an unsafe, improper and unworkmanlike manner in the following respects, among others, which will be proved at the trial:

1. Cross-respondent failed to maintain an adequate fire watch.
2. Cross-respondent opened a bunker tank and maintained it or suffered it to remain in an open condition with heat applied to the oil therein and work, including hot work proceeding in the vicinity of the tank and its openings.
3. Cross-respondent performed hot work, including electric arc welding in the vicinity of an open bunker tank containing oil which cross-respondent knew, or in the exercise of reasonable care, ought to have known, was being heated.
4. Cross-respondent failed and neglected to test or inspect the condition with respect to its explosive or inflammable characteristics of oil and gases in an open bunker tank near where cross-respondent was performing hot work, or, having made such tests or inspections, ignored the results thereof.

Wherefore, cross-libelant prays that cross-respondent be required to appear and answer all and singular the matters set forth herein and that, if the Court shall find that any party is entitled to a decree for damages against cross-libelant United States of America, then that cross-libelant have a decree, with costs, against cross-respondent for all

damages and costs awarded against cross-libelant and that cross-libelant may have such other and further relief and redress as to the Court may seem just.

LLOYD H. BURKE,
United States Attorney;

/s/ KEITH R. FERGUSON,
Special Assistant to the
Attorney General;

/s/ GRAYDON S. STARING,
Attorney, Admiralty and Shipping Section, De-
partment of Justice, Proctors for Petitioner
United States of America.

Duly verified.

[Endorsed]: Filed August 6, 1958.

[Title of District Court and Cause.]

NOTICE OF MOTION OF TODD SHIPYARDS
CORPORATION TO DISMISS PETITION
FOR LIMITATION OF LIABILITY

To: United States of America, Petitioner above-named, and to Robert H. Schnacke, United States Attorney; Keith R. Ferguson, Special Assistant to the Attorney General, and Graydon S. Staring, Attorney, Admiralty and Shipping Section of the Department of Justice, its proctors and to all claimants in the above-en-

titled proceedings and to their respective proctors:

Please Take Notice That on Monday, September 29, 1958, at 9:30 o'clock in the morning or as soon thereafter as counsel may be heard in the courtroom of the above-entitled court at the United States Post Office Building, Seventh and Mission Streets, San Francisco, California, claimant Todd Shipyards Corporation will move the court (1) to dismiss the petition of the United States of America for exoneration from or limitation of liability; (2) to dissolve, set aside and vacate the Restraining Order and Order Directing Issuance of Monition, dated and filed May 2, 1958, and (3) to order that all testimony taken by deposition in this proceeding or in the consolidated proceeding entitled, In the Matter of the Petition of Sheffield Tankers Corporation, No. 27543, in Admiralty, subsequent to the issuance of the said restraining order shall be deemed to have been taken in the said proceeding No. 27543, and in the suits of Todd Shipyards Corporation vs. United States of America, No. 27702 (Admiralty) and No. 37181 (Civil), and not subject to any infirmities by reason of the existence of the said restraining order.

The said motion will be made upon the ground that the liability in respect to which petitioner seeks limitation of liability is not a liability which falls within the policy and purview of the Acts of Congress limiting the liability of shipowners and the court does not have jurisdiction of the said peti-

tion. Said motion will be based upon the pleadings, files and records herein.

Dated: September 16, 1958.

/s/ RUSSELL A. MACKEY,

/s/ BRYANT K. ZIMMERMAN,

/s/ McCUTCHEON, DOYLE,
BROWN & ENERSEN,

/s/ CROWELL, ROUSE &
VARIAN,

Proctors for Claimant, Todd
Shipyards Corporation.

[Endorsed]: Filed September 16, 1958.

In the United States District Court for the Northern District of California, Southern Division

In Admiralty—No. 27721

In Re TROJAN, on the Petition of the UNITED STATES OF AMERICA, as Owner, for Exoneration From or Limitation of Liability.

ORDER DENYING MOTION TO DISMISS PETITION FOR EXONERATION FROM OR LIMITATION OF LIABILITY

Todd Shipyards Corporation (hereinafter called "Todd") moves to dismiss the United States, petition for limitation of liability. The pertinent facts may be summarized as follows:

On April 22, 1955, the United States acquired title by decree of forfeiture to the steam tanker Trojan (at that time called Jeanny). Shortly thereafter, pursuant to written contract with the United States, at its Alameda shipyard Todd prepared the Trojan for berth as a dead ship in the Suisun Reserve Fleet of the United States Maritime Administration. On completion of this work, the Trojan was placed and remained berthed in the Reserve Fleet at Suisun until December 26, 1956, when pursuant to a written contract of sale, the United States delivered the Trojan to Sheffield Tankers Corporation (at that time known as Rotary Tankers Corporation). Early in January, 1957, the new owner, Sheffield, delivered the vessel to Todd's Alameda yard for extensive reactivation repairs. On the afternoon of January 29, 1957, while the Trojan was moored afloat at Todd's pier, the after portion of the vessel was rocked by explosion which was followed by fire. Extensive damage was done to the vessel and approximately 52 persons were killed or injured.

Prior to the filing of this petition by the United States, Todd commenced a libel in this Court (Admiralty Number 27702) against the United States. This libel alleged, inter alia, that at the time of and in addition to the sale of the Trojan to Sheffield, the United States separately sold a quantity of oil located in the Trojan's port and starboard after bunker tanks. This oil, according to Todd's libel, was expressly or impliedly represented by the

United States to be of the character commonly known as "Bunker C fuel oil." Todd's libel further alleges the fluid in the bunker tanks referred to was not in fact Bunker C fuel oil, but rather an admixture of highly volatile, inflammable, explosive, and inherently dangerous matter; further, that the United States knew of the intended use to be made of the oil; the United States knew, or should have known, of its dangerous character, and failed to disclose such information to either Todd or Sheffield.

The motion to dismiss the petition of the United States raises two vital questions: First, since only the "owner" of a vessel may petition for limitation of liability, is the United States an "owner" within the meaning of 46 U.S.C., Sec. 183(a)? Second, does the nature of the claim (action based on breach of seller's warranty) asserted by Todd in its libel against the United States preclude this petition by the United States for limitation?

At the hearing herein Todd expressly relied solely on the nature of its claim as precluding this petition. However, as only the "owner" of a vessel may petition for limitation [46 U. S. C., § 183(a); 13 Benedict, Admiralty, § 498 (6th Ed., 1940)], this Court, as it must, has considered the jurisdictional issue whether the United States qualifies as an owner. In other words, may a person who at the time of the accident had neither legal nor equitable title qualify as an owner if the accident was proximately caused by such person's conduct at a

time when he unquestionably was the owner and unquestionably had the right of limitation?

The United States has cited authorities wherein the Courts have upheld petitions filed after the petitioners had disposed of their ownership in the vessels. However, in each of these cases the liability against which limitation was sought arose during the period of petitioner's ownership.

Milwaukee,

48 F. 2d 842 (E.D. Wisc., 1931);

The Columbia,

37 F. 2d 95 (2nd Cir., 1930);

The Giles Loring,

48 Fed. 463 (D.C. Maine, 1890).

In the instant case liability, if any, arose after the United States had disposed of all right, title and interest in the Trojan. Generally, it may be observed that the Courts uniformly have construed "owner" in a manner which will effectuate the purpose of this Act. Section 183 of Title 46 was designed by the Congress to encourage shipbuilding, and to induce investment in the shipping industry by limiting an owner's liability to the value of his interest in the vessel (plus pending freight). *British Transport Commission v. United States*, 354 U.S. 129 (1957). Thus it is this Court's opinion that in order to effectuate the purposes of the Act the motion to dismiss herein should be denied. To hold otherwise would subject a person to greater liability after a sale than existed before a sale.

The weakness of such a holding appears when it is recalled that the alleged liability arose as the result of negligent conduct occurring before sale and during ownership, at which time limitation would clearly have been available.

In the case of *Highland Nav. Corp.*, 29 F. 2d 37 (2nd Cir., 1928), two excursion vessels were totally destroyed by fire while being prepared for service following the winter's lay up and sank beside a pier belonging to the City of New York. The owner of the vessels gave proper notice of abandonment. The City of New York sought damages for (1) the cost of removing the wrecks, and (2) losses due to obstruction of the pier. The District Court, in allowing the petition for limitation, declared that "an abandoned vessel has no owner." *Highland Nav. Corp.*, 24 F. 2d 582 (D.C. N.Y., 1927). The Court of Appeals, 29 F. 2d 37 (2nd Cir., 1928), in affirming the District Court, impliedly recognized the right to seek limitation for an alleged liability arising after the termination of ownership.

Todd contends that under *American Car & Foundry Co. v. Brassert*, 289 U.S. 261 (1932), the limitation act is not available against a claim based on breach of seller's warranty. In the *Brassert* case the petitioner was the manufacturer of a small pleasure craft. He sold the vessel to the claimant under a conditional sales contract, reserving title until complete payment. After delivery of the vessel it was totally destroyed, allegedly due to manufacturing defects. The Court held that under the

circumstances limitation proceedings were not available. This Court is of the view that use of the term "vendor" in the Brassert opinion is merely descriptive of petitioner's primary status as manufacturer. The Court said: "Petitioner's liability, if any * * * would depend upon petitioner's conduct as maker of the vessel * * *" (at page 266), and "the purpose (of the act) was not concerned with * * * manufacture, which itself is not a maritime activity." (Emphasis supplied.) Thus, if petitioner as a manufacturer not engaged in maritime activity could not have the benefit of limitation before the sale, he is in no better position after the sale.

In addition it is well to point out that even if we accept Todd's interpretation of the Brassert case there is the possibility of other claims which are clearly subject to limitation being filed against the United States by Sheffield and the many personal injury claimants. Although it has been suggested (Gilmore & Black, Law of Admiralty p. 685) that the pre-1936 rule allowing the filing of a petition for limitation before the assertion of any claims [The Alcyone, 50 F. 2d 186 (E.D. N.Y., 1931)] might be abrogated by the wording of §§ 183(a) and 185 (as amended in 1936), the pre-1936 rule has been followed. In Petition of Wood, 124 F. Supp. 541 (S.D. N.Y., 1954), the Court, in holding that a petition could be filed even though no claim had yet been asserted, relied on Admiralty Rule 51, which provides, in part, that the petition should state "what claims, if any, are pending."

Thus, the motion to dismiss herein must be denied as there is the possibility of claims being asserted which are clearly subject to limitation.

Further, once it has been determined that a seller engaged in maritime activity is an owner entitled to limitation, it is clear that the Court in the Brasert case did not intend that the availability of limitation proceedings could be avoided merely by the form of the pleadings or the theory of the claim asserted.

In accordance with the above opinion the Court orders that the motion to dismiss the petition of the United States for exoneration from or limitation of liability be, and the same is hereby Denied.

Dated: October 28th, 1958.

/s/ ALBERT C. WOLLENBERG,
United States District Judge.

[Endorsed]: Filed October 28, 1958.

[Title of District Court and Cause.]

ANSWER OF TODD SHIPYARDS CORPORATION TO CROSS-LIBEL OF UNITED STATES OF AMERICA

Comes Now claimant and cross-respondent Todd Shipyards Corporation without admitting the jurisdiction of this court to the above-entitled proceeding, without waiving its objections thereto and an-

swering the cross-libel of petitioner United States of America, on information and belief admits, denies and alleges as follows:

I.

Admits the allegations of Article I.

II.

Admits the allegations of Article II except denies that cross-respondent's principal place of business is in the City of Alameda, State of California, or within the jurisdiction of the above-entitled court.

III.

Admits the allegations of Article III.

IV.

Admits the allegations of Article IV of said cross-libel except that it denies that its impleading petition in admiralty cause No. 27506 claimed recovery from petitioner United States of America on the basis of its alleged acts and failures as owner of said Trojan (ex the Jeanny).

V.

Admits the allegations of Article V except that it denies that the libel referred to therein was filed on April 8, 1958, and alleges that said libel was filed on April 2, 1958, and except that it denies that recovery in said libel was claimed on the basis of alleged acts and failures to act of petitioner as owner of the Trojan (ex Jeanny).

VI.

Admits the allegations of Article VI except that it denies that the complaint referred to therein was filed on April 8, 1958, and alleges that said complaint was filed on April 2, 1958, and except that it denies that recovery in said complaint was claimed on the basis of alleged acts or failures to act, of petitioner as owner of the Trojan (ex Jeanny).

VII.

Admits the allegations of Article VII.

VIII.

Admits the allegations of Article VIII except that it denies that said Trojan was berthed as a dead ship in the Suisun Bay Reserve Fleet of United States Maritime Administration until December 26, 1956.

IX.

Admits the allegations of Article IX.

X.

Admits the allegations of Article X, except that it denies that it became obligated in any respect other than stated in Contract MA-293 and Job Order No. 51 and denies that it became obligated to take exclusive custody, control and operation of said vessel.

XI.

Admits the allegations of Article XI except that it denies that it undertook or became obligated in

any respect other than as provided in Contract MA-293 and Job Order No. 51A and demands strict proof of the allegation in said Article of the specific work alleged.

XII.

Denies the allegations of Article XII.

XIII.

Admits the allegations of Article XIII.

XIV.

Admits the allegations of Article XIV.

XV.

Denies the allegations of Article XV.

XVI.

Denies the allegations of Article XVI.

XVII.

Denies the allegations of Article XVII.

XVIII.

Cross-respondent refers to and incorporates as if fully set forth herein all of the allegations, admissions and denials in the foregoing answers to Articles I, II, III, IV, V, VI, VII, VIII, XIV, and XVII of cross-libel.

XIX.

Denies the allegations of Article XIX of said cross-libel and each subdivision thereof.

And further answering the allegations of the cross-libel aforesaid and by way of a First Affirmative Defense thereto, cross-respondent alleges:

XX.

That Contract MA-293 referred to in the cross-libel provided that the obligations of the contractor to indemnify the United States, its agencies and its instrumentalities should not include actions, claims, costs or demands for death, personal injury or property damage arising or resulting from the fault of the United States, its agencies or instrumentalities or the vessel owners, and in any event:

"shall not exceed the sum of \$30,000 on account of any one accident or occurrence in respect to any one vessel and shall not extend to suits, actions, claims, costs or demands arising out of damages or injury caused by an accident or occurrence occurring later than sixty (60) days after the redelivery of the vessel upon which the work was performed."

That cross-respondent claims the benefit of the foregoing provisions of said contract and alleges that insofar as any of the matters referred to in said cross-libel occurred out of work done by cross-respondent under said Contract MA-293 or Job Orders 51 and 51A referred to in said cross-libel, same was not proximately caused by or the result of negligence or omission or failure on the part of

cross-respondent but was proximately caused by or resulted from the fault of United States, its agencies and instrumentalities or the vessel owners and by an occurrence or discovery later than sixty (60) days from the date the Trojan was redelivered to the United States.

And further answering the allegations of said cross-libel and by way of a Second Affirmative Defense thereto, cross-respondent alleges:

I.

That the explosion and fire referred to in said cross-libel and the personal injuries, deaths and damages resulting therefrom were proximately caused or contributed to by the faults, omissions and failures of cross-libelant in the respects alleged and set forth in the claim of said Todd Shipyards Corporation on file in this proceeding.

Wherefore, cross-respondent prays that the cross-libel herein be dismissed and in the alternative, but only in the alternative, that if cross-respondent should be held liable upon the matters and things alleged in said cross-libel that its liability be limited to \$300,000, for its costs of suit herein incurred and for such other and further relief as in justice it may be entitled to.

Dated November 12, 1958.

/s/ McCUTCHEON, DOYLE,
BROWN & ENERSEN,

/s/ RUSSELL A. MACKEY,

/s/ BRYANT K. ZIMMERMAN,

/s/ CROWELL, ROUSE &
VARIAN,

Proctors for Cross-
Respondent.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed November 12, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Todd Shipyards Corporation, claimant in the above-entitled proceeding, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order of the above-entitled court entered in the above-entitled proceeding on October 28, 1958, which order denied the motion by claimant to dismiss the petition and vacate and dissolve the restraining order and injunction herein, and from each and every part of said Order.

Dated: November 12, 1958.

/s/ McCUTCHEON, DOYLE,
BROWN & ENERSEN,

/s/ RUSSELL A. MACKEY,

/s/ BRYANT K. ZIMMERMAN,
/s/ CROWELL, ROUSE & VARIAN,
Proctors for Todd Shipyards
Corporation.

Receipt of copy acknowledged.

[Endorsed]: Filed November 12, 1958.

[Title of District Court and Cause.]

MOTION TO SUPPLEMENT RECORD
ON APPEAL

Comes now Petitioner United States of America and moves this Honorable Court, pursuant to Rule 75(h), Federal Rules of Civil Procedure, made applicable by Rule 8 of the Rules of the United States Court of Appeals for the Ninth Circuit, for an order directing the Clerk to file herein and certify to the Court of Appeals for the Ninth Circuit as part of the record on appeal herein true copies of the following documents from the files of the United States District Court for the Northern District of California: the Petition to Implead the United States of America filed by Todd Shipyards Corporation as Cross-Respondent in the case of Todd Shipyards Corporation v. the Steam Tanker Trojan, et al., formerly Admiralty No. 27506, now consolidated with the case, in the Matter of the Petition of Sheffield Tankers Corporation, Admiralty No. 27543, and the Answer thereto; the Libel

in the case of Todd Shipyards Corporation v. United States of America, Admiralty No. 27702; and the Complaint in the case of Todd Shipyards Corporation v. United States of America, Civil No. 37181.

This motion is based upon the entire record herein and is made upon the grounds that the said documents are referred to in the record herein, that they were referred to in proceedings before this Court on the motion of Claimant Todd Shipyards Corporation to dismiss the petition; that this Court could and did take judicial notice of such documents in its consideration of the said motion; and that the said documents are or may be material to the issues on appeal herein.

ROBERT H. SCHNACKE,
United States Attorney,

/s/ KEITH R. FERGUSON,
Special Assistant to the Attorney General,

/s/ GRAYDON S. STARING,
Attorney, Department of Justice, Admiralty and
Shipping Section, Proctors for Petitioner
United States of America.

Affidavit of mail attached.

[Endorsed]: Filed November 21, 1958.

[Title of District Court and Cause.]

ORDER TO SUPPLEMENT RECORD
ON APPEAL

Upon hearing and consideration of Petitioner's Motion to Supplement Record on Appeal herein, it is hereby

Ordered that the said Motion be and it hereby is granted and that the Clerk file herein and certify to the Court of Appeals for the Ninth Circuit as part of the record on appeal herein true copies of the Petition to Implead the United States of America filed by Todd Shipyards Corporation as Cross-Respondent in the case of Todd Shipyards Corporation v. the Steam Tanker Trojan, et al., formerly Admiralty No. 27506, now consolidated with the case, in the Matter of the Petition of Sheffield Tankers Corporation, Admiralty No. 27543, and the Answer thereto; the Libel in the case of Todd Shipyards Corporation v. United States of America, Admiralty No. 27702; and the Complaint in the case of Todd Shipyards Corporation v. United States of America, Civil No. 37181, the said copies to be furnished to the Clerk by Petitioner under a cover sheet captioned herein.

Dated December 11th, 1958.

/s/ ALBERT C. WOLLENBERG,
United States District Judge.

[Endorsed]: Filed December 11, 1958.

[Title of District Court and Cause.]

TRUE COPIES OF: PETITION TO IMPLEAD
UNITED STATES IN FORMER ADMIRALTY NO. 27506, NOW CONSOLIDATED
WITH ADMIRALTY NO. 27543; LIBEL IN
ADMIRALTY NO. 27702; COMPLAINT IN
CIVIL NO. 37181

United States District Court for the Northern District of California, Southern Division in Admiralty
No. 27506

TODD SHIPYARDS CORPORATION, a Corporation,
Libelant,
vs.

The Steam Tanker TROJAN (ex the JEANNY),
Her Engines, Machinery, Boilers, Boats,
Tackle, Apparel, etc., and SHEFFIELD
TANKERS CORPORATION, a Corporation,
Respondents.

SHEFFIELD TANKERS CORPORATION, a Corporation, in Its Own Behalf and as Owner
of the Steam Tanker TROJAN (ex the JEANNY),
Cross-Libelant,
vs.

TODD SHIPYARDS CORPORATION, a Corporation,
Cross-Respondent.

UNITED STATES OF AMERICA,
Respondent-Impleaded.

PETITION TO IMPLEAD U.S.A.
AS TO CROSS-LIBEL

To the Honorable Judges of the United States District Court for the Northern District of California, Southern Division.

The petition of Todd Shipyards Corporation, Cross-Respondent (hereinafter designated Todd) as it is proceeded against in the cross-libel of Sheffield Tankers Corporation (hereinafter designated Sheffield) both in its own name and as owner of the American steam tank vessel Trojan (ex Jeanny), (and hereinafter designated as Trojan), to implead the United States of America (hereinafter designated Government), alleges upon information and belief as follows:

I.

Todd is and at all times herein mentioned has been a corporation duly organized and existing under and by virtue of the laws of the State of New York and at all said times owned, operated, managed, leased or controlled a certain ship repair yard and facilities in Alameda, California, within the jurisdiction of this Honorable Court.

II.

Sheffield is and at all of the times mentioned in the cross-libel herein was a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and is now and at all of the said times owned, operated, managed

and/or controlled the T-2 type steam tank vessel Trojan.

III.

The Government is a sovereign corporation which has consented to be sued under the circumstances hereafter alleged.

IV.

That on or about December 26, 1956, and prior thereto the Government owned, operated, managed and/or controlled the Trojan, then named the Jeanny, a merchant vessel of the United States of America, bearing official number 247177.

V.

On or about December 26, 1956, the Government for good and valuable consideration, sold, delivered and transferred the Jeanny (now Trojan) to Sheffield (then named Rotary Tankers Corporation), together with her apparel, equipment, appurtenances and stores, including, among other things, a quantity of fuel oil or bunker oil located in the vessel's port and starboard aft bunker tanks.

VI.

Thereafter and on or about January 4, 1957, Sheffield, (then named Rotary Tankers Corporation), entered into a contract in writing with Todd for the performance by Todd at its ship repair yard, Alameda, California, of certain specified repairs together with the supply of certain materials, all in connection with the preparation of said ves-

sel for continued service as a merchant vessel of the United States of America.

VII.

On January 29, 1957, while the Trojan was lying afloat in the Todd ship repair yard, Alameda, California, as aforesaid, and while Sheffield, its agents, servants, employees and/or representatives was engaged in the lighting off of the boiler room fires and the heating and drawing of the oil in the said bunker tanks, an explosion or explosions occurred in the machinery spaces of said vessel followed by fire.

VIII.

Said explosion or explosions and fire resulted in extensive physical damage to the Trojan, including detention of the vessel during the course of repair of said damage, and in the death and personal injuries of several of the members of the crew of said vessel as well as employees of Todd.

IX.

On or about August 29, 1957, Sheffield on its own behalf and as owner of the Trojan filed a cross-libel in this Court against Todd to recover against Todd certain damages alleged to have resulted from said explosion or explosions and fire upon the ground that the same were caused or contributed to by fault or neglect or breach of contract by Todd while engaged in the performance of such repairs. Said cross-libel alleged inter alia the following:

“V.

“By reason of the foregoing, the Trojan was damaged. Bunkers were destroyed. Members of the crew and employees of Todd, and others, were killed and injured and sustained loss of or damage to property. The vessel was detained at great loss of profits and earnings to Sheffield. Extensive repairs were occasioned by the casualty. Much of the repair and reactivation already completed at the time of the casualty had to be redone.

VI.

“By reason of the foregoing, Sheffield and the Trojan sustained damage in an amount not now precisely known but in excess of \$1,-500,000.00.

VII.

“In addition, by reason of the foregoing, the Trojan and Sheffield have been sued by employees of Todd and others for death and personal injuries in an aggregate amount in excess of \$1,400,000.00, and additional suits will be commenced in amounts presently unascertained, but in excess of an additional one million dollars, as to which Sheffield reserves the right to amend its cross-libel. Sheffield will be damaged in the amount, if any, which it may be required to pay on account of said personal injuries and deaths, and for the costs and expenses required in the defense of said claims. By reason of the premises said dam-

ages, costs and expenses, to the extent sustained or incurred by Sheffield, should be borne by cross-respondent.”

X.

Todd alleges that at and prior to the time the Government sold, delivered and transferred the Jeanny (now Trojan) to Sheffield and at the time said vessel was placed by Sheffield in Todd’s ship repair yard for the aforesaid repairs and on January 29, 1957, at the time said explosion or explosions and fire occurred, such fuel oil as was then in the vessel’s port and starboard aft bunker tanks was admixed, in violation of the applicable statutes and regulations, with highly volatile, inflammable, explosive and imminently or inherently dangerous materials, or which admixture became imminently explosive and dangerous when subject to the uses and operations intended.

XI.

Todd alleges that the Government knew or should have known with the exercise of reasonable prudence and disclosed the imminently or inherently dangerous character and condition of such fuel oil but failed and neglected to do so and sold, transferred and delivered the same in violation of applicable statutes and regulations made and provided therefor, knowing the uses and purposes to which such fuel oil would be placed.

XII.

Todd alleges that said explosion or explosions and

fire which occurred on January 29, 1957, on board the Trojan with consequent extensive physical damage and other damage and personal injuries and death sustained by the members of the vessel's crew, employees of Todd and others, as alleged in Sheffield's cross-libel (Articles V, VI and VII) was or may be ultimately held to have been the primary, proximate or efficient result of the fault and negligence of the Government by reason of the matters and things alleged in this petition. If Todd should be held to be under any liability to Sheffield by reason of any of the matters alleged in the cross-libel of Sheffield, which liability Todd hereby specifically denies, then any and all such liability would ultimately be the primary, proximate or efficient result of the fault and negligence of the Government in that, among other things which will be shown at the trial herein, the Government, acting by and through the Maritime Administration, its agents, servants, representatives, and employees having custody, possession, supervision and control over the Jeanny (now Trojan), and those servants, agents, employees and/or representatives in charge of or jurisdiction over bids, tenders and contract or contracts for and the sale, transfer and delivery of said vessel, its apparel, appurtenances, inventory, fuel oil, consumable broached and unbroached stores,

1. Failed and neglected to inspect, sample and analyze fuel oil located in the port and starboard aft bunker tanks of said vessel before the sale and

delivery thereof as consumable bunker fuel oil for said vessel;

2. Failed and neglected to inspect, sample and analyze the said oil before the sale and delivery of the vessel together with its appurtenances, inventory and equipment including the oil located in the port and starboard bunker tanks of said vessel;

3. Failed and neglected to make a proper or any gas or explosive mixture test of the port and starboard aft bunker tanks of said vessel prior to the sale and delivery thereof to ascertain the condition and explosibility thereof and of the material in said tanks;

4. Failed and neglected to ascertain prior to the time of the sale and delivery of said vessel, its appurtenances, equipment and inventory and of the fuel oil located in said vessel's port and starboard aft bunker tanks, that said material therein contained was admixed with highly volatile, inflammable, and explosive substances which rendered the same imminently and inherently dangerous when subjected to heating and normal usage as vessel fuel oil or bunkers.

5. In the sale and delivery of said vessel, her appurtenances, equipment and inventory which included in its port and starboard aft bunker tanks oil admixed with highly volatile explosive and imminently or inherently dangerous substances, without disclosure of such conditions;

6. In the sale and delivery of oil contained in the port and starboard bunker tanks of said vessel, which oil was admixed with highly volatile, inflammable and imminently dangerous substances or which mixture would become explosive and imminently dangerous when subjected to the uses and operations intended;

7. In the sale and delivery of material contained in the port and starboard aft bunker tanks of said vessel, representing the same, expressly or impliedly, to be "Bunker C" fuel oil and without disclosure that such material was admixed with highly volatile, inflammable, explosive and imminently or inherently dangerous substances;

8. In the sale and delivery of the material contained in the port and starboard aft bunker tanks of said vessel as bunker fuel oil in contravention of the applicable provisions of Title 46, Code of Federal Regulations, Parts 30-39, inclusive, promulgated by the U. S. Coast Guard and entitled, "Rules and Regulations for Tank Vessels," and particularly Article 35.25-10 thereof.

9. In the sale and delivery of the material contained in the port and starboard aft bunker tanks of said vessel as bunker fuel oil in contravention of the applicable provisions of Title 46, U. S. Code, Section 881, and rules and regulations of the American Bureau of Shipping entitled, "Rules for the Classification and Construction of Steel Vessels," and particularly Section 36, Art. 24 thereof.

XIII.

By reason of the premises any and all such liability should be borne by the Government and not by Todd and the said Government should be proceeded against directly in this Court by Sheffield. Alternatively, if Todd should be held under any liability by reason of any of the matters alleged in the cross-libel then and in such event Todd is entitled to recovery over against the Government to the extent of any such liability.

XIV.

The Government has consented by law to be sued herein by the Act of Congress known as the "Suits in Admiralty Act (46 U. S. Code, § 741 et. seq.) or in the alternative under the Public Vessels Act 46 U. S. Code, § 781 et. seq.), or in the alternative under the Federal Tort Claims Act (title 28, U. S. Code, § 1346 et. seq.), Act of Congress August 2, 1946, as amended and supplemented, including Title 28 U. S. Code § 2674.

XV.

All and singular the premises are true and within the Admiralty jurisdiction of the United States of America and of this Honorable Court.

Wherefore, petitioner, Todd Shipyards Corporation, prays that a citation in due form of law in accordance with the rules and practice of this Honorable Court may issue against the United States of America, respondent-impleaded herein:

1. Citing it to appear and answer upon oath all and singular the matters in this petition and in the cross-libel set forth and that such respondent-impleaded may be proceeded against as if originally made a party herein, and
2. That this Court may dismiss the cross-libel herein as against petitioner, Todd Shipyards Corporation, with costs, and may hold the said impleaded respondent, United States of America, liable for any damages that the cross-libelant may be entitled to recover herein, and that in the alternative that petitioner may have recovery over against respondent-impleaded for any damages for which petitioner may be found liable herein, and
3. That said petitioner may have such other and further relief in the premises as to the Court may seem just and proper.

McCUTCHEON, THOMAS, MATTHEW, GRIFITHS & GREENE,

CROWELL, ROUSE &
VARIAN,
Proctors for Todd Shipyards
Corporation.

[Endorsed]: Filed December 20, 1957.

United States District Court for the Northern District of California, Southern Division

No. 27702—In Admiralty

TODD SHIPYARDS CORPORATION, a Corporation,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent.

LIBEL

To the Honorable Judges of the United States District Court for the Northern District of California, Southern Division

The libel of Todd Shipyards Corporation (hereinafter designated "Todd") against United States of America (hereinafter designated "Government") in a cause of action civil and maritime, alleges on information and belief as follows:

I.

Todd is and at all the times herein mentioned has been a corporation duly organized and existing under and by virtue of the laws of the State of New York and at all of said times owned, operated, managed, leased or controlled a certain ship repair yard and facilities in Alameda, California, within the jurisdiction of this Honorable Court.

II.

The Government is a sovereign state which has consented to be sued under the circumstances hereinafter alleged.

III.

Sheffield Tankers Corporation, formerly named Rotary Tankers Corporation, (hereinafter called "Sheffield") is and at all the times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Delaware. That on and at all times subsequent to December 26, 1956, said Sheffield owned, operated, managed, controlled and was in possession of the T-2 type steam tank vessel Trojan, formerly named the Jeanny (hereinafter called the "Trojan").

IV.

On or about December 26, 1956, and prior thereto, the Government owned, operated, managed, controlled and was in possession of said tank vessel Trojan, then named the Jeanny, bearing Official No. 247177, as a merchant vessel of the United States of America.

V.

On or about December 26, 1956, the Government for good and valuable consideration, sold, delivered and transferred the said Trojan to Sheffield (then named Rotary Tankers Corporation), together with her apparel and outfit, and further separately sold for good and valuable consideration to said Sheffield, among other things, a quantity of oil located, among other tanks, in said vessel's port and star-

board after bunker tanks. That all the oil so sold was sold by the Government as fuel oil of the character customarily used as bunker oil and commonly described as Bunker C fuel, hereinafter called "Bunker C fuel oil").

VI.

Thereafter and on or about January 4, 1957, Sheffield (then named Rotary Tankers Corporation), entered into a contract in writing with Todd for the performance by Todd at its ship repair yard, Alameda, California, of certain specified repairs, and to supply certain materials, all in connection with the preparation of said vessel for continued service as a merchant vessel of the United States of America. Thereafter the vessel was delivered to Todd's plant at Alameda, California, for such repairs.

VII.

On January 29, 1957, while said Trojan was lying afloat at Todd's ship repair yard, Alameda, California, as aforesaid, an explosion or explosions occurred in the port bunker tank and machinery spaces of said vessel, followed by fire. That said explosion or explosions and fire occurred while Sheffield, its crew, agents, servants, employees and representatives were engaged in heating the oil in the said bunker tanks and pumping said oil from the bunker tanks to the boiler room and lighting off the boiler room fires and using said oil in connection therewith, in order to dry out newly installed brick.

VIII.

Said explosion or explosions and fire resulted in extensive physical and other damage to property of Todd and damage to the said Trojan and Sheffield, including damages for detention of the vessel during the course of repair of said damage. Said explosion or explosions and fire also resulted in the death of one member of the crew of said Trojan and death of and personal injuries to others, including employees of Todd and certain subcontractors of Todd.

IX.

By reason of the foregoing: Todd sustained extensive direct and other damages in the amount of approximately One Hundred Thousand Dollars (\$100,000); a number of suits in admiralty and actions at law have been commenced against Todd, individually, and against Todd and Sheffield, jointly and severally, on account of damages resulting from the personal injuries and deaths aforesaid; a cross-libel in admiralty has been commenced by Sheffield against Todd for physical damages sustained by the said Trojan and damages for detention of said vessel and for indemnity for the amount Sheffield may be adjudged and required to pay on account of the personal injury and death claims aforesaid, all in an aggregate amount in excess of Eight Million Dollars (\$8,000,000). Other claims may be asserted and suits filed in respect to matters concerning which libelant is not now informed in which event libelant will amend and asks leave to amend this libel accordingly.

X.

At and prior to the time the Government sold, delivered and transferred said Trojan to Sheffield, and at the time the Government sold and delivered the oil in the aft bunker tanks of said vessel to Sheffield and at the time said vessel was placed by Sheffield at Todd's ship repair yard for the aforesaid repairs, and on January 29, 1957, at the time the said explosion or explosions and fire occurred, said oil was not Bunker C fuel oil as represented and sold, but on the contrary, in violation of the applicable statutes, regulations and said representations, was an admixture of highly volatile, inflammable, explosive and inherently or imminently dangerous substances which in fact made it highly volatile, inflammable, explosive and imminently dangerous or which became imminently explosive and dangerous and resulted in its throwing off vapors in explosive and dangerous quantities when heated or subjected to the intended uses and operations of fuel oil on tanker vessels such as the Trojan.

XI.

The Government breached said representation that the oil in the vessel's port and starboard aft bunker tanks was Bunker C fuel oil. The Government knew, or with the exercise of reasonable care and prudence should have known and disclosed, the imminently or inherently dangerous character and condition of such oil, but failed and neglected to do so, and sold, transferred and delivered the same in violation of the applicable statutes and regulations made and

provided therefor and its obligations, knowing the purposes for which said oil would be used.

XII.

Todd alleges that said explosion or explosions and fire which occurred on January 29, 1957, on board the Trojan with consequent extensive physical damage and other damage and personal injuries and death were, or may be held to be, the primary, proximate or efficient result of the fault and negligence of the Government by reason of the matters and things alleged herein. If Todd should be held to be under any liability therefor, which liability Todd hereby specifically denies, then any and all such liability would ultimately be the primary, proximate or efficient result of the fault and negligence of the Government in that, among other things which will be shown at the trial herein, the Government, acting by and through the Maritime Administration, its agents, servants, representatives, and employees having custody, possession, supervision and control over the said Trojan and of the oil in her aft port and starboard bunker tanks, and those servants, agents, employees and/or representatives in charge of or having jurisdiction over bids, tenders and contract or contracts for the sale, transfer and delivery of said vessel, its apparel, appurtenances, inventory and of the fuel oil, consumable broached and unbroached stores; negligently:

1. Breached its representation, express or implied that the oil located in the vessel's port and starboard bunker tanks was Bunker C fuel oil;

2. Failed and neglected to inspect, sample and analyze the oil located in the port and starboard aft bunker tanks of said vessel before the sale and delivery thereof as consumable Bunker C fuel oil for said vessel;
3. Failed and neglected to inspect, sample and analyze the said oil before the sale and delivery of the vessel together with its appurtenances, inventory and equipment including the oil located in the port and starboard bunker tanks of said vessel;
4. Failed and neglected to make a proper or any gas or explosive mixture test of the port and starboard aft bunker tanks of said vessel prior to the sale and delivery thereof to ascertain the condition and explosibility thereof and of the material in said tanks;
5. Failed and neglected to ascertain prior to the time of the sale and delivery of said vessel its appurtenances, equipment and inventory and of the oil located in said vessel's port and starboard aft bunker tanks, that said material therein contained was admixed with highly volatile, inflammable, and explosive substances which rendered the same imminently and inherently dangerous when subjected to heating and normal usage as fuel and bunker oil;
6. Sold and delivered said vessel, her appurtenances, equipment and inventory and the oil in its port and starboard aft bunker tanks which oil was admixed with highly volatile, explosive and im-

minently or inherently dangerous substances without disclosure of such conditions;

7. Sold and delivered the oil contained in the port and starboard bunker tanks of said vessel, which oil was admixed with highly volatile, inflammable and imminently dangerous substances or which mixture would become explosive and imminently dangerous when subjected to the uses and operations intended;

8. Sold and delivered the oil contained in the port and starboard aft bunker tanks of said vessel representing the same expressly or impliedly, to be Bunker C fuel oil and without disclosure that such material was admixed with highly volatile, inflammable, explosive and imminently or inherently dangerous substances;

9. Sold and delivered the oil contained in the port and starboard aft bunker tanks of said vessel as Bunker C fuel oil in contravention of the applicable provisions of Title 46, Code of Federal Regulations, Parts 30-39, inclusive, "Rules and Regulations for Tank Vessels," and particularly Article 35.25-10 thereof;

10. Sold and delivered the material contained in the port and starboard aft bunker tanks of said vessel as Bunker C fuel oil in contravention of the applicable provisions of Title 46, U.S. Code, Section 881, and rules and regulations of the American Bureau of Shipping entitled, "Rules for the Classifica-

tion and Construction of Steel Vessels," and particularly Section 36, Art. 24 thereof.

XIII.

Todd alleges that said explosion or explosions followed by fire were or may be held to have been the primary, proximate or efficient result of the breaches, defaults and negligence of the Government as alleged herein.

XIV.

By reason of the premises any and all such liability should be borne by the Government and if Todd should be held under any liability by reason of any of the matters alleged herein then and in such event Todd is entitled to be indemnified by the Government to the extent of any such liability.

XV.

The Government has consented by law to be sued herein by the Act of Congress known as the "Suits in Admiralty Act" (46 U.S. Code, Sec. 741 et seq.) or in the alternative under the Public Vessels Act (46 U.S. Code, Sec. 781 et seq.), or in the alternative under the Federal Tort Claims Act (Title 28, U.S. Code, Sec. 1346 et seq.), Act of Congress, August 2, 1946, as amended and supplemented, including Title 28, U.S. Code Sec. 2674.

XVI.

All and singular the premises are true and within the Admiralty jurisdiction of the United States of America and of this Honorable Court.

Wherefore, libelant, Todd Shipyards Corporation, prays as follows:

1. That a citation in due form of law in accordance with the rules and practices of this Honorable Court may issue against the United States of America, respondent herein, citing said respondent to appear and answer upon oath all and singular the matters in this libel set forth, and
2. That a decree be entered herein in favor of libelant, Todd Shipyards Corporation, and against the United States of America, respondent, for and to the extent of libelant's direct damages aforesaid, and for and to the extent that libelant may be held liable to other parties on account of the said explosions and fire and to the extent that any damages may be recovered against libelant by reason of the matters and things referred to herein, together with legal fees and expenses incurred by libelant in defending claims and suits asserted against it, and for libelant's costs of suit herein incurred and for such other and further relief in the premises as to the Court may seem just and proper.

McCUTCHEON, THOMAS, MATTHEW, GRIFTHS & GREENE,

CROWELL, ROUSE & VARIAN,
Proctors for Todd Shipyards
Corporation.

Duly Verified.

[Endorsed]: Filed April 2, 1958.

United States District Court for the Northern
District of California, Southern Division

At Law Civil No. 37181

TODD SHIPYARDS CORPORATION, a Corpo-
ration,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

To the Honorable Judges of the United States Dis-
trict Court for the Northern District of Cali-
fornia, Southern Division

The complaint of Todd Shipyards Corporation (hereinafter called "Todd") against defendant, United States of America (hereinafter called the "Government") alleges on information and belief as follows:

I.

Todd is and at all the times herein mentioned has been a corporation duly organized and existing under and by virtue of the laws of the State of New York and at all of said times owned, operated, managed, leased or controlled a certain ship repair yard and facilities in Alameda, California, within the jurisdiction of this Honorable Court.

II.

The Government has consented by law to be sued

herein under the Federal Tort Claims Act Title 28, U.S. Code Sec. 1346 et seq.), Act of Congress August 2, 1946, as amended and supplemented, including Title 28, U.S. Code Sec. 2674, and by the Act of Congress known as the Suits in Admiralty Act (46 U.S. Code Sec. 741 et seq.) or in the alternative under the Public Vessels Act (46 U.S. Code Sec. 781 et seq.).

III.

Sheffield Tankers Corporation, formerly named Rotary Tankers Corporation, (hereinafter called "Sheffield") is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Delaware. That on and at all times subsequent to December 26, 1956, said Sheffield owned, operated, managed, controlled and was in possession of the T-2 type steam tank vessel Trojan, formerly named the Jeanny (hereinafter called the "Trojan").

IV.

On or about December 26, 1956, and prior thereto, the Government owned, operated, managed, controlled and was in possession of said tank vessel Trojan, then named the Jeanny, bearing Official No. 247177, as a merchant vessel of the United States of America.

V.

On or about December 26, 1956, the Government for good and valuable consideration, sold, delivered and transferred the said Trojan to Sheffield (then

named Rotary Tankers Corporation), together with her apparel and outfit, and further separately sold for good and valuable consideration to said Sheffield, among other things, a quantity of oil located, among other tanks, in said vessel's port and starboard after bunker tanks. That all the oil so sold was sold by the Government as fuel oil of the character customarily used as bunker oil and commonly described as Bunker C fuel oil (hereinafter called "Bunker C fuel oil").

VI.

Thereafter and on or about January 4, 1957, Sheffield (then named Rotary Tankers Corporation), entered into a contract in writing with Todd for the performance by Todd at its ship repair yard, Alameda, California, of certain specified repairs, and to supply certain materials, all in connection with the preparation of said vessel for continued service as a merchant vessel of the United States of America. Thereafter the vessel was delivered to Todd's plant at Alameda, California, for such repairs.

VII.

On January 29, 1957, while said Trojan was lying afloat at Todd's ship repair yard, Alameda, California, as aforesaid, an explosion or explosions occurred in the port bunker tank and machinery spaces of said vessel, followed by fire. That said explosion or explosions and fire occurred while Sheffield, its crew, agents, servants, employees and representatives were engaged in heating the oil in the

said bunker tanks and pumping said oil from the bunker tank to the boiler room and lighting off the boiler room fires and using said oil in connection therewith, in order to dry out newly installed brick.

VIII.

Said explosion or explosions and fire resulted in extensive physical and other damage to property of Todd and damage to the said Trojan and Sheffield, including damages for detention of the vessel during the course of repair of said damage. Said explosion or explosions and fire also resulted in the death of one member of the crew of said Trojan and death of and personal injuries to others, including employees of Todd and certain subcontractors of Todd.

IX.

By reason of the foregoing: Todd sustained extensive direct and other damages in the amount of approximately One Hundred Thousand Dollars (\$100,000); a number of suits in admiralty and actions at law have been commenced against Todd, individually, and against Todd and Sheffield, jointly and severally, on account of damages resulting from the personal injuries and deaths aforesaid; a cross-libel in admiralty has been commenced by Sheffield against Todd for physical damages sustained by the said Trojan and damages for detention of said vessel and for indemnity for the amount Sheffield may be adjudged and require to pay on account of the personal injury and death claims aforesaid, all in an aggregate amount in excess of Eight Million

Dollars (\$8,000,000). Other claims may be asserted and suits filed in respect to matters concerning which plaintiff is not now informed in which event plaintiff will amend and asks leave to amend this complaint accordingly.

X.

At and prior to the time the Government sold, delivered and transferred said Trojan to Sheffield and at the time the Government sold and delivered the oil in the aft bunker tanks of said vessel to Sheffield and at the time said vessel was placed by Sheffield at Todd's ship repair yard for the aforesaid repairs, and on January 29, 1957, at the time the said explosion or explosions and fire occurred, said oil was not Bunker C fuel oil as represented and sold, but on the contrary, in violation of the applicable statutes, regulations and said representations, was an admixture of highly volatile, inflammable, explosive and inherently or imminently dangerous substances which in fact made it highly volatile, inflammable, explosive and imminently dangerous or which became imminently explosive and dangerous and resulted in its throwing off vapors in explosive and dangerous quantities when heated or subjected to the intended uses and operations of fuel oil on tanker vessels such as the Trojan.

XI.

Todd alleges that said explosion or explosions and fire which occurred on January 29, 1957, on board the Trojan with consequent extensive physical damage and other damage and personal injuries and

death were, or may be held to be, the primary, proximate or efficient result of the fault and negligence of the Government by reason of the matters and things alleged herein. If Todd should be held to be under any liability therefor, which liability Todd hereby specifically denies, then any and all such liability would ultimately be the primary, proximate or efficient result of the fault and negligence of the Government in that, among other things which will be shown at the trial herein, the Government, acting by and through the Maritime Administration, its agents, servants, representatives, and employees having custody, possession, supervision and control over the said Trojan and of the oil in her aft port and starboard bunker tanks, and those servants agents, employees and/or representatives in charge of or having jurisdiction over bids, tenders and contract or contracts for the sale, transfer and delivery of said vessel, its apparel, appurtenances, inventory and of the fuel oil, consumable broached and unbroached stores; negligently:

1. Breached its representation, express or implied that the oil located in the vessel's port and starboard bunker tanks was Bunker C fuel oil;
2. Failed and neglected to inspect, sample and analyze the oil located in the port and starboard aft bunker tanks of said vessel before the sale and delivery thereof as consumable Bunker C fuel oil for said vessel;
3. Failed and neglected to inspect, sample and analyze the said oil before the sale and delivery of

the vessel together with its appurtenances, inventory and equipment including the oil located in the port and starboard bunker tanks of said vessel;

4. Failed and neglected to make a proper or any gas or explosive mixture test of the port and starboard aft bunker tanks of said vessel prior to the sale and delivery thereof to ascertain the condition and explosibility thereof and of the material in said tanks;

5. Failed and neglected to ascertain prior to the time of the sale and delivery of said vessel, its appurtenances, equipment and inventory and of the oil located in said vessel's port and starboard aft bunker tanks, that said material therein contained was admixed with highly volatile, inflammable, and explosive substances which rendered the same imminently and inherently dangerous when subjected to heating and normal usage as fuel and bunker oil;

6. Sold and delivered said vessel, her appurtenances, equipment and inventory and the oil in its port and starboard aft bunker tanks which oil was admixed with highly volatile, explosive and imminently or inherently dangerous substances without disclosure of such conditions;

7. Sold and delivered the oil contained in the port and starboard bunker tanks of said vessel, which oil was admixed with highly volatile, inflammable and imminently dangerous substances or which mixture would become explosive and im-

minently dangerous when subjected to the uses and operations intended;

8. Sold and delivered the oil contained in the port and starboard aft bunker tanks of said vessel representing the same expressly or impliedly, to be Bunker C fuel oil and without disclosure that such material was admixed with highly volatile, inflammable, explosive and imminently or inherently dangerous substances;

9. Sold and delivered the oil contained in the port and starboard aft bunker tanks of said vessel as Bunker C fuel oil in contravention of the applicable provisions of Title 46, Code of Federal Regulations, Parts 30-39, inclusive, "Rules and Regulations for Tank Vessels," and particularly Article 35.25-10 thereof;

10. Sold and delivered the material contained in the port and starboard aft bunker tanks of said vessel as Bunker C fuel oil in contravention of the applicable provisions of Title 46, U.S. Code Section 881, and rules and regulations of the American Bureau of Shipping entitled, "Rules for the Classification and Construction of Steel Vessels," and particularly Section 36, Art. 24 thereof.

XII.

Todd alleges that said explosion or explosions followed by fire were or may be held to have been the primary, proximate or efficient result of the breaches, defaults and negligence of the Government as alleged herein.

XIII.

By reason of the premises any and all such liability should be borne by the Government and if Todd should be held under any liability by reason of any of the matters alleged herein then and in such event Todd is entitled to be indemnified by the Government to the extent of any such liability.

XIV.

All and singular the premises are true and within the jurisdiction of the United States and of this Honorable Court.

Wherefore, plaintiff Todd Shipyards Corporation, demands judgment against the defendant, United States of America,

- (a) for its direct damages sustained by it herein to the amount of approximately One Hundred Thousand Dollars (\$100,000);
- (b) for indemnity against any sum or sums which it may be adjudged to pay by reason of any of the matters or things stated or referred to herein, together with legal fees and expenses incurred in defending claims and suits asserted against it;
- (c) Costs of suit;
- (d) Reasonable attorneys' fees not to exceed twenty per cent (20%) of the damages recovered herein, and

(e) Such other and further relief as to the Court may seem just and proper.

McCUTCHEN, THOMAS, MATTHEW, GRIF-
FITHS & GREENE,

CROWELL, ROUSE & VARIAN,
Attorneys for Plaintiff, Todd
Shipyards Corporation.

[Endorsed]: Filed April 2, 1958.

[Endorsed]: Filed December 12, 1958.

[Title of District Court and Cause.]

**CERTIFICATE OF CLERK TO
APOSTLES ON APPEAL**

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify that the accompanying documents numbered from 1 to 107, inclusive, are the originals filed in the above-entitled case and constitute the Apostles on Appeal herein as designated.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 15th day of December, 1958.

[Seal] C. W. CALBREATH,
Clerk,

By /s/ J. P. WELSH,
Deputy Clerk.

[Endorsed]: No. 16295. United States Court of Appeals for the Ninth Circuit. Todd Shipyards Corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: December 15, 1958.

Docketed: December 19, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 16,295

TODD SHIPYARDS CORPORATION,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON APPEAL

Appellant Todd Shipyards Corporation intends to rely on the following points in the above-entitled appeal:

1. Appellee, the United States of America, was not the owner of the "Trojan" (ex "Jeanny") at the time the casualty occurred on January 29, 1957, or at the time it filed the petition herein and cannot limit its liability under the Acts of Congress providing for limitation of liability of shipowners (46 U.S.C., Sec. 183, et seq.; Rev. Stat. 4283, et seq., August 29, 1935, as amended and supplemented).

2. The said Acts of Congress do not permit a shipowner to limit its liability to zero amount by means of a voluntary sale of all its interest in a ship prior to the casualty for which limitation is sought.

3. The liability in respect to which the appellee seeks limitation of liability is not a liability which

falls within the policy and purview of the said Acts of Congress.

4. The District Court does not have jurisdiction of the appellee's Petition for Exoneration from or Limitation of Liability and it should be dismissed.

5. The Restraining Order and Order Directing Issuance of Monition, dated and filed May 2, 1958, should be dissolved, set aside and vacated, particularly as said order enjoined and restrained prosecution by appellant of the following proceedings:

(a) Petition of Todd Shipyards Corporation to implead United States, in No. 27543, in admiralty, formerly No. 27506.

(b) Libel of Todd Shipyards Corporation vs. United States of America, No. 27702, in admiralty.

(c) Complaint of Todd Shipyards Corporation vs. United States of America, Civil No. 37181.

Dated: February 26, 1959.

/s/ McCUTCHEON, DOYLE,
BROWN & ENERSEN,

/s/ RUSSELL A. MACKEY,

/s/ BRYANT K. ZIMMERMAN,

/s/ CROWELL, ROUSE &
VARIAN,

Attorneys for Appellant.

[Endorsed]: Filed March 3, 1959.

In the United States Court of Appeals
for the Ninth Circuit

No. 16,295

TODD SHIPYARDS CORPORATION,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

STIPULATION AND DESIGNATION OF
RECORD MATERIAL TO APPEAL

It Is Hereby Stipulated:

1. That, subject to paragraph 3 hereof, the following constitutes all of the record which is material to the consideration of the above-entitled appeal:

[Items from (a) to (bb) are not listed because already printed in transcript.]

2. That the claims and answers designated as material to the consideration of this appeal are representative of all of the claims and answers filed in the District Court and that no other claims or answers contain allegations concerning the grounds of liability of the United States which are materially different from those contained in the said claims and answers.

3. That the foregoing shall be without prejudice to the printing, by either party, of additional por-

tions of the record as appendices to their briefs, should such portions be made to appear material to the consideration of this appeal.

McCUTCHEON, DOYLE,
BROWN & ENERSEN,

/s/ RUSSELL A. MACKEY,

/s/ BRYANT K. ZIMMERMAN,

CROWELL, ROUSE &
VARIAN,

Attorneys for Appellant.

ROBERT H. SCHNACKE,
United States Attorney;

/s/ KEITH R. FERGUSON,
Special Assistant to the
Attorney General;

/s/ GRAYDON S. STARING,
Attorney, Admiralty and Shipping Section, Department of Justice, Attorneys for Appellee, United States of America.

[Endorsed]: Filed March 3, 1959.